

*United States Court of Appeals
for the
District of Columbia Circuit*



**TRANSCRIPT OF
RECORD**

727

JOINT APPENDIX
(Vol. I—Pages 1-380, Incl.)

IN THE
United States Court of Appeals
For the District of Columbia Circuit

No. 19,840

VOLKSWAGENWERK AKTIENGESELLSCHAFT,

Petitioner,

against

FEDERAL MARITIME COMMISSION and UNITED STATES OF AMERICA,

Respondents,

PACIFIC MARITIME ASSOCIATION and MARINE TERMINALS CORPORATION,
Intervenors.

On Petition to Review and Set Aside Order of the
Federal Maritime Commission

STEPTOE & JOHNSON
1250 Connecticut Avenue, N.W.
Washington, D. C. 20036

WALTER H. MAYO, III
Federal Maritime Commission
1321 H Street, N.W.
Washington, D. C. 20573

HERZFELD & RUBIN
40 Wall Street
New York, N. Y. 10005

IRWIN A. SEIBEL
United States Department of Justice
Washington 25, D. C.

PILLSBURY, MADISON & SUTRO
225 Bush Street
San Francisco, California 94104

Attorneys for Respondents

Attorneys for Petitioner

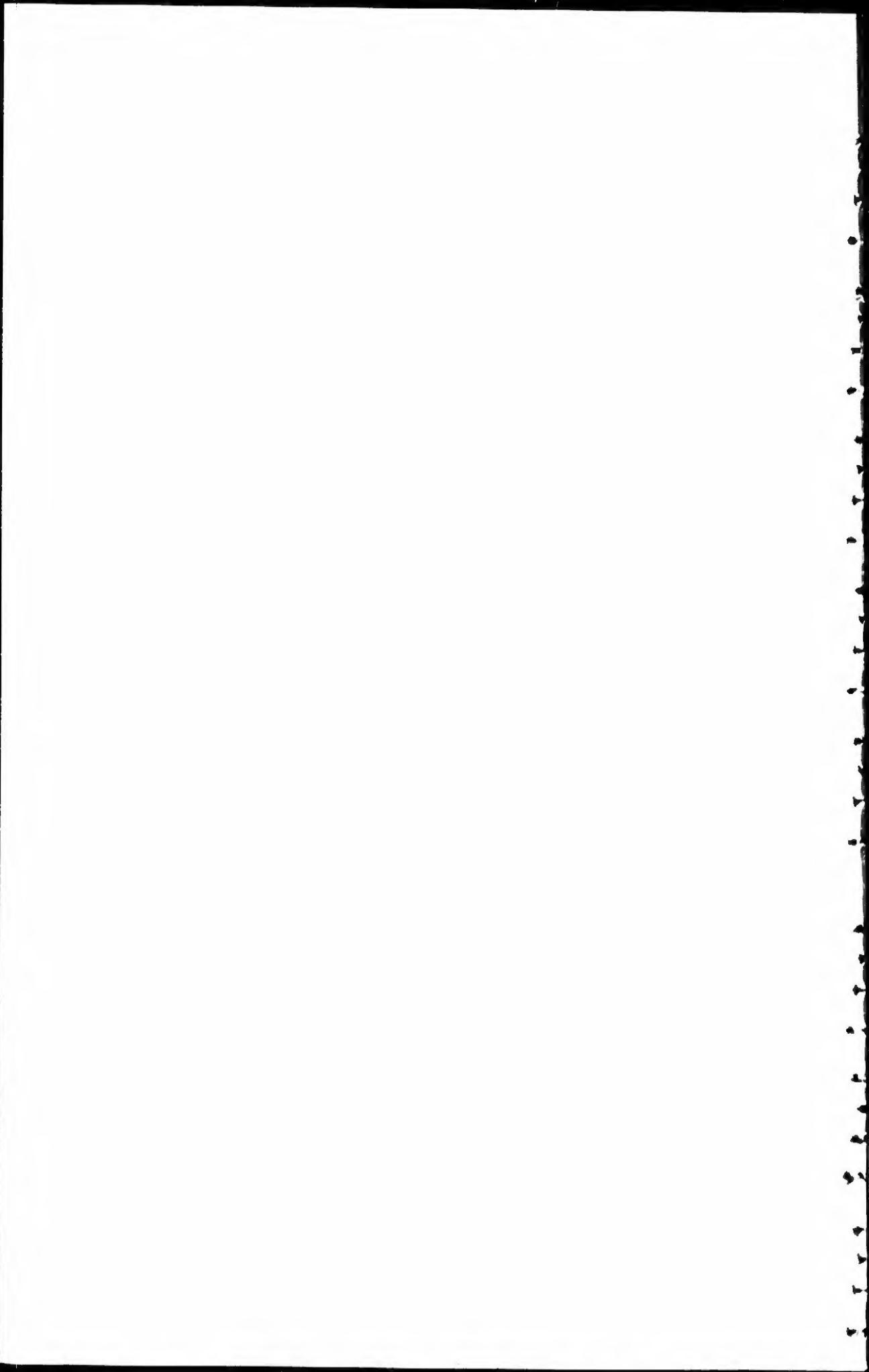
LILLICK, GEARY, WHEAT, ADAMS
& CHARLES
311 California Street
San Francisco, California 94104

McCUTCHEON, DOYLE, BROWN,
TRAUTMAN & ENERSEN
601 California Street
San Francisco, California 94108

Attorneys for Intervenor Pacific Maritime Association *Attorneys for Intervenor Marine Terminal Corporation*

FILED MAY 3 1966

Nathan J. Paulson
CLERK



INDEX

	PAGE
Docket Before the Commission	1a
Complaint	12a
Exhibit A—Libel	18a
Exhibit B—Answer to Libel	25a
Exhibit C—Petition to Impelad Volkswagenwerk A. G.	28a
Exhibit D—Answer of Complainant	31a
Answer to Complaint	40a
Petition of Pacific Maritime Association to Intervene in Opposition to the Complaint	43a
Exhibit A—Letter, Dated September 28, 1961	50a
Exhibit B—Letter, Dated December 14, 1961	52a
Reply of Complainant to Petition of Pacific Maritime Association to Intervene in Opposition to the Complaint	58a
Application for Subpoena Duces Tecum	65a
Ruling on Application for Subpoena Duces Tecum	68a
Excerpts from Testimony	69a
Complainant's Proposed Findings of Fact and Conclusions of Law	596a
Initial Decision of Benjamin A. Theeman, Examiner	611a
Appendix I—(Same as Exhibits 5-A and 5-B, printed herein at pages 466a to 479a.)	
Appendix II	657a
Complainant's Memorandum of Exceptions to Conclusions, Findings and Statements in Initial Decision	659a

PAGE

Exceptions and Brief in Support of Exceptions of Respondents Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles)	665a
Report of Commission	666a
Commissioner John S. Patterson—Dissenting ..	678a
Commissioner Hearn—Dissenting	722a
Order of Commission	729a
Petition for Review	730a
Stipulation as to Issues and Procedures to be Fol- lowed	745a

TESTIMONY**COMPLAINANT'S WITNESSES****Kenneth Frederick Sayette:**

Direct	69a
Cross	83a
Redirect	84a
Recross	87a

Peter N. Teige:

Direct	87a
Cross	117a
Redirect	129a
Recross	134a

Fred R. Smith:

Direct	134a
Cross	136a

Ellet G. Horsman:

Direct	137a
Cross	154a
Redirect	162a

	PAGE
Peter Curtis:	
Direct	163a
Cross	170a
Frederick F. Noonan:	
Direct	174a
Cross	176a

**WITNESS FOR INTERVENOR, PACIFIC
MARITIME ASSOCIATION**

Paul St. Sure:	
Direct	178a
Cross	227a

RESPONDENT'S WITNESS

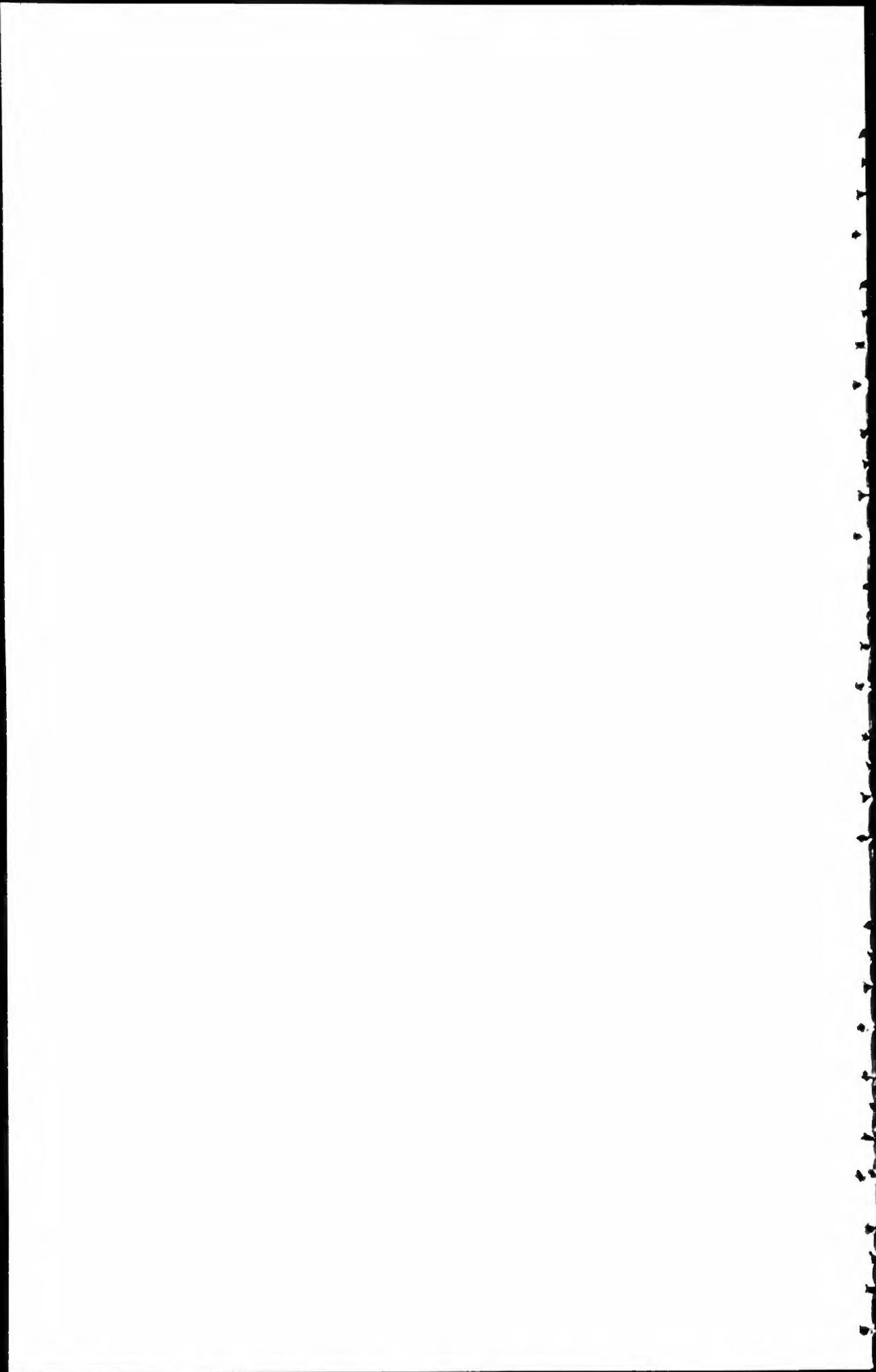
Ellet G. Horsman:	
By Examiner	237a
By Mr. Zimmerman	240a
Cross	241a

EXHIBITS

1-A—Memorandum of Understanding Between Pacific Maritime Association and International Longshoremen's and Warehousemen's Union	243a
1-B—Memorandum of Agreement on Mechanization and Modernization, October 18, 1960 and Memorandum of Understanding attached thereto	262a
1-C—ILWU-PMA Supplemental Agreement on Mechanization and Modernization, Dated November 15, 1961	279a
1-D—Schedule A—Death and Disability Benefits ..	310a

	PAGE
1-E—Schedule B—Vesting Benefits	317a
1-F—Schedule C—Supplemental Wage Benefits ...	323a
1-G—Letter, Dated November 15, 1961	336a
1-H—Letter, Dated November 15, 1961	338a
1-I—Letter, Dated November 15, 1961	340a
1-J—First Amendment of ILWU-PMA Supple- mental Agreement on Mechanization and Moderni- zation	343a
2-D—Minutes of Meeting of December 12, 1962	345a
2-F—Minutes of Meeting of July 3, 1962	354a
2-H—Minutes of Meeting of December 13, 1961	356a
2-I—Minutes of Meeting of November 7, 1961	358a
2-K—Minutes of Meeting of July 11, 1961	365a
2-L—Minutes of Meeting of March 8, 1961	366a
2-N—Minutes of Meeting of January 16, 1961	369a
2-O—Minutes of Meeting of January 10, 1961	372a
2-P—Minutes of Meeting of January 6, 1961	378a
3—By-Laws as Amended of Pacific Maritime Associa- tion	381a
4—Pacific Coast Longshore Agreement	411a
5-A—Report of PMA Committee, Dated January 4, 1961	466a
5-B—Statement of Minority Opinion on ILWU Funding	475a
6—Letter, Dated January 11, 1961	479a
7—Letter, Dated January 17, 1961	481a
9—Letter, Dated March 1, 1961	486a
10—Letter, Dated March 3, 1961	487a

	PAGE
11—Letter, Dated March 24, 1961	492a
12—Letter, Dated March 23, 1961	493a
13—Letter, Dated May 1, 1961	495a
14—Letter, Dated May 1, 1961	496a
20—Minutes of Meeting of August 1, 1961	498a
21—Memorandum of August 15, 1961	502a
22—Memorandum of October 24, 1961	507a
25—Letter, Dated November 29, 1961	510a
26—Letter, Dated November 29, 1961	511a
28—Memorandum of February 8, 1962	515a
31—Memorandum of March 27, 1962	517a
32—Letter, Dated December 10, 1962	519a
35—Letter, Dated January 17, 1961	521a
36—Letter, Dated February 3, 1961	524a
39—Letter, Dated February 9, 1961 with attachment thereto	525a
40—Letter, Dated March 6, 1961 with attachment thereto	530a
41—Letter, Dated March 13, 1961 with attachment thereto	534a
46—Letter, Dated March 3, 1961 with attachment thereto	538a
47—Letter, Dated July 3, 1961, with attachment thereto	554a
48—Errata Sheet, Dated April 25, 1962, with attach- ment thereto	571a
55—Revised Payment Procedures, Dated March 16, 1961	588a
56—Memorandum of December 14, 1961	594a



(Docket 1)

Docket Before the Commission

(Docket 1)

DOCKET No. 1089

VOLKSWAGENWERK AKTIENGESELLSCHAFT,

against

MARINE TERMINALS CORPORATION and MARINE TERMINALS
CORPORATION (OF LOS ANGELES).

Exhibit No.

Description

1. Complaint, dated January 17, 1963, 10 pages, with 1-page Power of Attorney, and 8-page Exhibit A, 4-page Exhibit B, 4-page Exhibit C, 11-page Exhibit D, 4-page Exhibit E, 8-page Exhibit F, 11-page Exhibit G, 8-page Exhibit H, 4-page Exhibit I, 1-page Exhibit J, and 1-page Exhibit K.
2. Answer to Complaint, dated February 15, 1963, 5 pages.
3. Notice of Assignment, dated February 18, 1963, 1 page.
4. Petition of Pacific Maritime Association to Intervene in Opposition to the Complaint, dated February 18, 1963, 9 pages, with 2-page Exhibit A and 4-page Exhibit B.
5. Permission to Intervene, dated February 27, 1963, 1 page.
6. Reply of Complainant to Petition of Pacific Maritime Association to Intervene in Opposition to the Complaint, dated March 7, 1963, 11 pages.

Docket Before the Commission

<i>Exhibit No.</i>	<i>Description</i>
7.	Notice of Hearing, dated March 25, 1963, 1 page.
8.	Location of Hearing Room, dated March 29, 1963, 1 page.
9.	Application for Subpoena <i>Duces Tecum</i> , dated April 4, 1963, 5 pages.
10.	Ruling on Application for Subpoena <i>Duces Tecum</i> , dated April 12, 1963, 1 page.
11.	Late Filed Exhibit, dated May 29, 1963, 1 page.
12.	Complainant's Brief and Proposed Findings of Fact and Conclusions of Law, dated June 21, 1963, 45 pages, with 14-page Appendix.
13.	Permission for Pacific Maritime Association to Exceed the Limitation on Length of Briefs, dated July 16, 1963, 1 page.
[2] 14.	Brief of Intervener, Pacific Maritime Association, dated July 23, 1963, 70 pages; with 8-page Appendix.
15.	Respondents' Answering Brief, dated July 19, 1963, 11 pages.
16.	Complainant's Reply Brief, dated August 12, 1963, 29 pages.
17.	Initial Decision, dated June 4, 1964, 38 pages, with 17-page attachment.
18.	Request of Complainant for Enlargement of Time within which to File Exceptions to Initial Decision, dated June 12, 1964, 8 pages.
19.	Pacific Maritime Association's Reply to Request of Complainant for Extension of Time, dated June 16, 1964, 3 pages.

(Docket 2)

3a

Docket Before the Commission

<i>Exhibit No.</i>	<i>Description</i>
20.	Enlargement of Time for Filing Exceptions and Replies, dated June 18, 1964, 1 page.
21.	Request of Complainant for Permission to File a Brief in Support of its Memorandum of Exceptions in Excess of Fifty Pages, dated July 30, 1964, 6 pages.
22.	Complainant's Memorandum of Exceptions and Brief, dated July 30, 1964, 75 pages, with 6-page appendix.
23.	Exceptions and Brief in Support of Exceptions of Respondents Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles), dated July 24, 1964, 12 pages.
24.	Enlargement of Time for Filing Replies to Exceptions, dated August 4, 1964, 1 page.
25.	Reply of Respondent to Complainant's Exceptions, dated August 28, 1964, 3 pages.
26.	Intervener's Answering Brief in Support of Initial Decision of Examiner, dated August 31, 1964, 43 pages, with 27-page Appendix A.
27.	Notice of Oral Argument, dated October 14, 1964, 1 page.
28.	Allotment of Time at Oral Argument, dated October 28, 1964, 1 page.
29.	Transcript of Oral Argument, November 4, 1964, pages 1 through 92.
30.	Report of the Commission, dated October 13, 1965, 65 pages, with 1-page Order.
31.	Transcript of Hearing, April 22-26, 1963, 440 pages, Volumes I-V.

Docket Before the Commission

<i>Exhibit No.</i>	<i>Description</i>
[3] 32. The following Exhibits were received:	
1a	Memorandum of Understanding between Pacific Maritime Association and International Longshoremen's and Warehousemen's Union, dated August 10, 1959, 13 pages.
1b	Memorandum of Agreement on Mechanization and Modernization, October 18, 1960, 9 pages, with 2-page Exhibit A.
1c	ILWU-PMA Supplemental Agreement on Mechanization and Modernization, November 15, 1961, 45 pages.
1d	Schedule A Death and Disability Benefits, 7 pages.
1e	Schedule B Vesting Benefits, 6 pages.
1f	Schedule C Supplemental Wage Benefits, 19 pages.
1g	Letter from Pacific Maritime Association to International Longshoremen's & Warehousemen's Union, dated November 15, 1961, 2 pages.
1h	Letter from Pacific Maritime Association to International Longshoremen's & Warehousemen's Union, dated November 15, 1961, 2 pages.
1i	Letter from Pacific Maritime Association to International Longshoremen's & Warehousemen's Union, dated November 15, 1961, 3 pages.
1j	First Amendment to ILWU-PMA Supplemental Agreement on Mechanization and Modernization, dated October 29, 1962, 2 pages.

(Docket 4)

5a

Docket Before the Commission

<i>Exhibit No.</i>	<i>Description</i>
2a	Minutes of Annual Meeting of Members of Pacific Maritime Association, March 14, 1963, 4 pages.
2b	Minutes of Regular Quarterly Meeting of Board of Directors of Pacific Maritime Association, March 14, 1963, 9 pages.
2c	Minutes of Meeting of Board of Directors of Pacific Maritime Association, February 4, 1963, 4 pages.
2d	Minutes of Regular Quarterly Meeting of Board of Directors of Pacific Maritime Association, December 12, 1962, 9 pages.
2e	Minutes of Meeting of Members of Pacific Maritime Association, July 26, 1962, 3 pages.
[4] 2f	Minutes of Meeting of Board of Directors and American Flag Operators of Pacific Maritime Association, July 3, 1962, 10 pages.
2g	Minutes of Meeting of Members of Pacific Maritime Association, May 14, 1962, 5 pages.
2h	Minutes of Regular Meeting of Board of Directors of Pacific Maritime Association, December 13, 1961, 5 pages.
2i	Minutes of Meeting of Board of Directors of Pacific Maritime Association, November 7, 1961, 7 pages.
2j	Minutes of Meeting of Board of Directors of Pacific Maritime Association, August 10, 1961, 6 pages.
2k	Minutes of Meeting of Board of Directors of Pacific Maritime Association, July 11, 1961, 8 pages.

Docket Before the Commission

<i>Exhibit No.</i>	<i>Description</i>
2l	Minutes of Annual Meeting of Members of Pacific Maritime Association, March 13, 1961, 4 pages.
2m	Minutes of Regular Quarterly Meeting of Board of Directors of Pacific Maritime Association, March 8, 1961, 20 pages.
2n	Minutes of Meeting of Board of Directors of Pacific Maritime Association, January 16, 1961, 4 pages.
2o	Minutes of Meeting of Members of Pacific Maritime Association, January 10, 1961, 4 pages.
2p	Minutes of Meeting of Board of Directors of Pacific Maritime Association, January 6, 1961, 3 pages.
3	By-laws as amended of Pacific Maritime Association, April 1960, 46 pages.
4	Pacific Coast Longshore Agreement, 1961-1966, 139 pages.
5	Letter from American President Lines to J. Paul St. Sure, dated January 4, 1961, 1 page.
5a	Report of PMA Committee on Work Improvement Fund Contributions Procedures, dated January 4, 1961, 9 pages.
[5] 5b	Statement of Minority Opinion on ILWU Funding, dated January 4, 1961, 6 pages.
6	Letter from Pacific Maritime Association to members dated January 11, 1961, 2 pages.

(Docket 5)

7a

Docket Before the Commission

<i>Exhibit No.</i>	<i>Description</i>
7	Letter from Winchester Agencies, Inc. to Pacific Maritime Association, dated January 17, 1961, 3 pages.
8	Telegram to Pacific Maritime Association from San Francisco Port Authority, 1 page.
9	Letter from Marine Terminals Corporation to Pacific Maritime Association, dated March 1, 1961, 1 page.
10	Letter to Pacific Maritime Association from Peter N. Teige, dated March 3, 1961, 4 pages.
11	Letter to K. F. Sayette from J. D. MacEvoy, dated March 24, 1961, 1 page.
12	Letter from Waterman Corporation of California to Associated Banning, dated March 23, 1961, 2 pages.
13	Letter from Marine Terminals Corporation to Pacific Maritime Association, dated May 1, 1961, 1 page.
14	Letter from Marine Terminals Corporation to Pacific Maritime Association, dated May 1, 1961, 1 page.
15	Letter from Pacific Far East Line, Inc. to Pacific Maritime Association, dated May 22, 1961, 1 page.
16	Letter from Seattle Stevedore Co. to Pacific Maritime Association, dated May 25, 1961, 2 pages.
17	Letter from Marine Terminals Corporation to Pacific Maritime Association, dated May 25, 1961, 2 pages.

Docket Before the Commission

<i>Exhibit No.</i>	<i>Description</i>
18	Letter from Brady-Hamilton Stevedore Co. to Pacific Maritime Association, dated May 25, 1961, 2 pages.
19	Letter from K. F. Saysette to H. J. Bodine, dated August 3, 1961, 2 pages.
[6] 20	Minutes of Committee on Work Improvement Fund Contribution Procedures, August 1, 1961, 5 pages.
21	Memorandum on the Mechanization Fund, August 15, 1961, 2 pages.
22	Memo to J. Paul St. Sure from P. Lancaster, dated October 24, 1961, 2 pages.
23	Telegram to Pacific Maritime Association from Seattle Stevedore Co., 1 page.
24	Telegram to Pacific Maritime Association from Brady Hamilton Stevedoring Co., 1 page.
25	Letter from Marine Terminals Corporation to Peter N. Teige, dated November 29, 1961, 1 page.
26	Letter from Winchester Agencies, Inc., to Peter N. Teige, dated November 29, 1961, 3 pages.
27	Memo to J. Paul St. Sure from Pres. Lancaster dated December 13, 1961, 2 pages.
28	Memo on Proposed Five to One Maximum Limitation on Assessable Tonnage for Automobiles, dated February 8, 1962, 1 page.
29	Memorandum for J. Paul St. Sure dated February 20, 1962, 1 page.

(Docket 6-7)

9a

Docket Before the Commission

<i>Exhibit No.</i>	<i>Description</i>
30	Letter from Graham James & Rolph to Pacific Maritime Association, dated March 23, 1962, 1 page.
31	Memorandum to J. Paul St. Sure from Pres. Lancaster, dated March 27, 1962, 1 page.
32	Letter from McCutchen, Doyle, Brown & Ennersen to Marine Terminals Corporation, dated December 10, 1962, 2 pages.
33	Letter from Waterman Corporation of California to California Stevedore & Ballast Co., dated January 25, 1963, 2 pages.
34	Letter from Pacific Maritime Association to members, dated January 17, 1961, 2 pages.
35	Letter from Pacific Maritime Association to members, dated January 17, 1961, 2 pages.
[7] 36	Letter from Pacific Maritime Association to members, dated February 3, 1961, 1 page.
37	Telegrams to Pacific Maritime Association from Albina Dock Co., the Commission of Public Docks, Portland, Oregon, the Port of Olympia, Washington, the Port of Astoria, Oregon, and the Northwest Marine Terminal Association, all dated December 22, 1960, 3 pages.
38	Letter from Pacific Foreign Trade Steamship Association to Mr. St. Sure, dated June 17, 1960, 1 page.
39	Letter from Pacific Maritime Association to Board of Directors, dated February 9, 1960, 1 page, with 5-page attachment.

Docket Before the Commission

<i>Exhibit No.</i>	<i>Description</i>
40	Letter from Pacific Maritime Association to Board of Directors, dated March 6, 1961, 1 page, with 5-page attachment.
41	Letter from Pacific Maritime Association to Board of Directors, dated March 13, 1962, 1 page, with 5-page attachment.
42	First Meeting—New Fund Committee, February 14, 1961, 3 pages.
43	Third Meeting, February 21, 1961, 2 pages.
44	Memo from PMA to Committee Members, dated February 24, 1961, 1 page.
45	Letter from Pacific Maritime Association to PMA Members, dated May 15, 1961, 1 page.
46	Letter from Pacific Maritime Association to Members, dated March 3, 1960, 1 page, with 10-page attachment.
47	Letter from Pacific Maritime Association to Members, dated July 3, 1961, 1 page, with 11-page attachment.
48	Pacific Maritime Association Errata Sheet, dated April 25, 1962, 1 page, with 11-page attachment.
49	Memorandum to K. F. Saysette dated April 22, 1963, 1 page.
50	Letter from Seattle Stevedore Co. to Winchester Agencies, Inc., dated November 30, 1961, 1 page.
[8] 51	Stevedoring order to Marine Terminals Corp., dated February 20, 1961, 1 page.

(Docket 8)

11a

Docket Before the Commission

<i>Exhibit No.</i>	<i>Description</i>
52	Telegram to P. Curtis from Folkscar Traffic, 1 page.
53	Comparison of Certain Cargoes Assessed for Mechanization Fund Purposes on a Measurement Ton Basis, dated April 25, 1963, 1 page.
53A	Method of Computing "Measurement Tonnage in a Single Weight Ton", dated April 25, 1963, 1 page.
54	ILWU Redraft of PMA Document Dated 11/19/57, dated November 27, 1957, 2 pages.
55	Letter from Pacific Maritime Association to Members, dated March 16, 1961, 2 pages, with 5 attachments.
56	Letter from Pacific Maritime Association to Members, dated December 14, 1961, 1 page.
57	Letter from Pacific Maritime Association to Members, dated December 20, 1961, 1 page.
58	Telegram to Automar, Inc., from Volkswagen of America, Inc., 2 pages.

(Complaint 1-2)

12a

Complaint

(Filed January 29, 1963)

BEFORE THE
FEDERAL MARITIME COMMISSION

[SAME TITLE]

I

COMES now the complainant above named, pursuant to section 22 of the Shipping Act, 1916 (46 U.S.C., sec. 821) and for its complaint against respondents alleges as follows:

II

At all relevant times complainant was, and now is, a corporation organized and existing under the laws of the Federal Republic of Germany, engaging in that country in the manufacture of automobiles and also in the exportation of part of such automobiles to the United States through the ports of San Francisco and Los Angeles, among others. The address of its principal office is Wolfsburg, Germany.

[2] III

At all relevant times respondents Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles) were, and now are, corporations organized and existing under the laws of the State of Nevada, with principal offices in San Francisco and Long Beach, California, respectively. The address of the principal office of the former is 261 Stewart Street, San Francisco 5, California; and of the latter, 920 South Pico Avenue, Long Beach, California. Respondents are engaged in the business of

Complaint

furnishing terminal services and facilities, including stevedoring services, in connection with common carriers by water, and as such are subject to the provisions of the Shipping Act, 1916. At various times in the past respondents have provided terminal facilities and rendered terminal and stevedoring services to complainant in connection with the discharging of complainant's automobile cargoes at San Francisco and Los Angeles.

IV

Complainant is informed and believes and therefore alleges that at some time on or after January 1, 1961, respondents and other persons, namely, Pacific Maritime Association, a nonprofit corporation organized under the laws of the State of California, and certain members thereof, conspired [3] and agreed or had an understanding or arrangement to impose upon complainant an extra charge for the said terminal and stevedoring services and facilities in the form of an assessment. This assessment is sought to be imposed in order to raise funds for the performance by respondents and the said other persons of the Supplemental Agreement of Mechanization and Modernization, which is described generally in the libel attached here-to as Exhibit A.

V

The said agreement or understanding or arrangement (hereinafter referred to collectively as the "Agreement") to impose the extra charge for terminal and stevedoring services and facilities in the form of an assessment on complainant is subject to the provisions of section 15 of the Shipping Act, 1916 (46 U.S.C., sec. 814) as an agreement "fixing or regulating transportation rates * * * giving or receiving special rates * * * controlling, regulating, preventing, or destroying competition * * * or * * * pro-

Complaint

viding for an exclusive, preferential, or co-operative working arrangement." As such, the Agreement requires approval by the Federal Maritime Commission before it can be carried out lawfully. Since the Agreement has neither been filed with nor approved by the Commission, it is illegal and void and neither it nor [4] the assessment may be imposed upon complainant.

VI

Moreover, the Agreement is unjustly discriminating and unfair as between shippers and importers, operates to the detriment of the commerce of the United States, is contrary to the public interest and is in violation of sections 16 and 17 of the Shipping Act, 1916 (46 U.S.C., secs. 815 and 816) in that it imposes upon the automobile cargoes of complainant a disproportionately high share of the costs of the plan of the Supplemental Agreement of Mechanization and Modernization in connection with which the assessment is imposed, raising the cost of discharge of complainant's automobile cargoes by approximately twenty-two to thirty-two per cent as against an average increase in the cost of discharge of other cargo of only approximately two and one-half per cent. The Agreement, therefore, should not be approved by the Commission.

VII

For the reasons set forth in paragraph VI hereof, the assessment subjects complainant and its automobile cargoes to undue and unreasonable prejudice and disadvantage in violation of section 16 of the Shipping Act, 1916 (46 U.S.C., sec. 815).

[5] VIII

For the reasons set forth in paragraph VI hereof, the assessment comprises an unjust and unreasonable practice relating to and connected with the receiving, handling,

Complaint

storing and delivering of property, in violation of section 17 of the Shipping Act, 1916 (46 U.S.C., sec. 816).

IX

Complainant has at all times maintained the unlawfulness of the assessment as presently sought to be imposed against it by respondents and the said other persons. However, following the filing by Pacific Maritime Association of a libel against respondents on August 14, 1962, respondents, by a petition to implead filed on September 13, 1962, in the United States District Court for the Northern District of California, Southern Division, sought and still seek to collect the said assessment from complainant, in violation of sections 15, 16 and 17 of the Shipping Act, 1916. On November 6, 1962, complainant moved before the said Court for a stay of the proceedings before it, pending a determination by the Commission of the questions of violation of sections 15, 16 and 17 of the Shipping Act, 1916, as matters within the initial and primary jurisdiction of the Federal Maritime Commission. The order granting this stay, [6] pursuant to which the instant complaint is now filed, was issued on November 29, 1962. It was subsequently amended by an order issued on December 11, 1962. Copies of the proceedings in the said Court are attached as exhibits hereto, and are designated: Libel (Exhibit A); Answer to Libel (Exhibit B); Petition to Implead Volkswagenwerk A.G. (Exhibit C); Answer of Complainant (Exhibit D); Motion for a Stay of Proceedings (Exhibit E); Memorandum in Support of Motion of Respondent Impleaded to Stay Proceedings of Complainant (Exhibit F); Libelant's Memorandum of Points and Authorities in Opposition to Motion for Stay (Exhibit G); Respondents' Memorandum in Opposition to Motion for Stay (Exhibit H); Order of United States District Court of November 29, 1962 (Exhibit I); Amendment of De-

Complaint

ember 11, 1962 to Order of United States District Court (Exhibit J); Stipulated Order Extending Time (Exhibit K).

X

WHEREFORE, complainant prays that respondents be required to answer the charges herein, and that after due hearing and investigation an order be made:

- (1) Determining that the Agreement among respondents and the said other persons [7] which imposes an extra charge upon complainant for terminal and stevedoring services and facilities furnished with respect to its automobile cargoes falls within the purview of section 15 of the Shipping Act, 1916, and therefore must be approved by the Commission before it can be lawfully effectuated;
- (2) Determining that the Agreement has not been filed with the Commission as provided in the said section 15 and has not been approved by the Commission;
- (3) Determining that the Agreement should not be approved by the Commission because it violates the said section 15 in that it is unjustly discriminatory and unfair as between shippers and importers, operates to the detriment of the commerce of the United States and is contrary to the public interest;
- (4) Determining that the Agreement should not be approved by the Commission because [8] it violates section 16 of the said Act by subjecting complainant's automobile cargoes to an undue or unreasonable prejudice or disadvantage;
- (5) Determining that the Agreement should not be approved because it violates section 17 of the said Act by establishing regulations and practices

(Complaint 8-9)

17a

Complaint

which are not just and reasonable as required by that section;

(6) Determining that the Agreement is disapproved;

(7) Ordering respondents to cease and desist from seeking to impose or collect the assessment or extra charge referred to herein; and

(8) Making such other, further and different [9] order or orders as the Commission determines to be proper in the premises.

Dated at San Francisco, California, this day of January, 1963.

Respectfully submitted,

PETER CURTIS,
An Authorized Representative
of Complainant.

Attorneys for Complainant:

HERZFELD & RUBIN,

WALTER HERZFELD,

40 Wall Street,

New York 5, New York.

PILLSBURY, MADISON & SUTRO,

S. J. MADDEN,

225 Bush Street,

San Francisco 4, California.

(Ex. A. Complaint 1)

18a

**Exhibit A, Annexed to Foregoing Complaint
(Libel)**

[1] Edward D. Ransom
Gary J. Torre
Lillick, Geary, Wheat, Adams & Charles
311 California Street
San Francisco 4, California
Telephone: GArfield 1-4600

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION
No. 28599 in Admiralty

PACIFIC MARITIME ASSOCIATION, a non-profit corporation,
Libelant,
v.

MARINE TERMINALS CORPORATION, a corporation; MARINE
TERMINALS CORPORATION (OF LOS ANGELES), a corporation;
ASSOCIATED-BANNING COMPANY, a corporation; CALIFORNIA
STEVEDORE AND BALLAST COMPANY, a corporation; SEATTLE
STEVEDORE Co., a corporation; and BRADY HAMILTON
STEVEDORE Co., a corporation,

Respondents.

LIBEL IN PERSONAM

To THE HONORABLE, THE JUDGES OF THE
ABOVE-ENTITLED COURT:

The libel of Pacific Maritime Association, a non-profit
corporation, in behalf of itself and in behalf of its member

Exhibit A

companies, in a cause based on contract, civil and maritime, alleges:

I.

Libelant, Pacific Maritime Association (hereinafter referred to as "PMA") is now, and at all times herein mentioned was, a non-profit corporation, duly organized and existing under the laws [2] of the State of California, with its principal office in San Francisco, California. Libelant, as such non-profit corporation, is composed of members who are owners or operators of or agents for practically all American flag dry cargo vessels operated in the intercoastal, coastwise and offshore trades with Pacific Coast ports as a terminal or base of operations and of members who are employers of practically all workers engaged in longshore, terminal and related operations in the loading and discharging of dry cargo vessels in Pacific Coast ports. Libelant represents its members in collective bargaining and labor relations with labor unions who in turn represent, for collective bargaining, crew members employed aboard such American flag dry cargo vessels and employees engaged in such longshore, terminal and related operations.

II.

Respondent Marine Terminals Corporation is a corporation organized and existing under the laws of the State of Nevada, with a principal office in San Francisco, California.

Respondent Marine Terminals Corporation (of Los Angeles) is a corporation organized and existing under the laws of the State of Nevada, with a principal office in Long Beach, California.

Respondent Associated-Banning Company is a corporation organized and existing under the laws of the State of

(Ex. A. Complaint 2-3)

20a

Exhibit A

California, with a principal office in Wilmington, California.

Respondent California Stevedore and Ballast Company is a corporation organized and existing under the laws of the State of California, with a principal office in San Francisco, California.

Respondent Seattle Stevedore Co. is a corporation organized and existing under the laws of the State of Washington, with a principal office in Seattle, Washington.

Respondent Brady Hamilton Stevedore Co. is a corporation [3] organized and existing under the laws of the State of Oregon, with a principal office in Portland, Oregon.

Each of the respondents is engaged in the business of performing stevedoring and terminal services and related operations in loading and discharging ocean-going dry cargo vessels calling at various ports of the Pacific Coast of the United States. Each respondent is a member of PMA and is also an Employer as hereinafter designated.

III.

The International Longshoremen and Warehousemen's Union (hereinafter referred to as the "ILWU") is, for the purpose of this libel, the union and certified collective bargaining agent in California, Washington and Oregon for all longshoremen, marine clerks and persons with related classifications who are employed by members of PMA (hereinafter referred to as "Employees"). The ILWU, in behalf of said Employees, and PMA, in behalf of its members employing such Employees, are parties to the Pacific Coast Longshore Agreement, the Master Agreement for Clerks and Related Classifications, and various miscellaneous related labor agreements.

IV.

The ILWU, on behalf of the aforesaid Employees, and PMA, representing its member companies, including each

Exhibit A

of respondents, entered into as of January 1, 1961 a Supplemental Agreement on Mechanization and Modernization, which agreement is hereinafter broadly referred to as the "Agreement." This Agreement together with appendices, schedules, trust indentures and trust implementing the Agreement, hereinafter broadly referred to as the "Plan," will be submitted in evidence in this proceeding.

The broad purpose of the Plan is to encourage utilization of modern methods of cargo carriage and handling, including elimination [4] of restrictive work practices and permitting containerization of cargo, so as to permit labor savings and ultimate economy in steamship operations. In order to minimize the hardships which Employees would otherwise suffer as a consequence of the substantial reduction of work opportunities, the Plan was established to provide additional compensation to longshoremen, marine clerks and related classifications (Employees) for their work in loading and discharging of ships and operations related thereto. Such compensation under the Plan is to be paid into a Mechanization Fund collected by PMA and distributed by PMA to three separate trusts, each of which will hold the same for the payment of various benefits to the Employees.

V.

Under the Agreement and the Plan the compensation for the Employees is paid into the Mechanization Fund through contributions by the stevedore and terminal companies (hereinafter sometimes called "Employers"), who are the direct employers of longshoremen, marine clerks and related classifications in Washington, Oregon and California (Employees). The total annual contributions of all such Employers to the Mechanization Fund for a period of five and one-half years is specified in the Agreement, but the power of fixing the method by which the amount of assessments of such contributions from such direct Em-

Exhibit A

ployers is determined is reserved to PMA and determined by agreement between PMA members pursuant to the By-Laws of PMA. The source from which such direct Employers of such Employees obtain their respective contributions is left to such Employers to determine.

By duly adopted Resolutions of the Board of Directors binding upon all members thereof, including respondents and each of them, the method by which the PMA assesses the contribution of such direct Employers to the Mechanization Fund for work of stevedoring, terminal [5] and related activities in the loading and discharging of vessels has been determined. Pursuant to such Resolutions of the Board of Directors of PMA assessments have been made.

VI.

By Article III of the aforesaid Agreement libelant is appointed the collecting agent in accumulating the contributions from the direct Employers to the Mechanization Fund. Libelant by said Agreement is further authorized and empowered to take all reasonable action necessary to compel Employers to comply with their obligations under the Agreement, and is further empowered and authorized to commence and pursue such legal remedies as may be appropriate to enforce contributions.

VII.

Respondents, and each of them, are such direct Employers of such Employees, and, accordingly, under the said Agreement and pursuant to such Resolutions each respondent is obligated to pay such additional compensation to such Employees through contributions to libelant, PMA, as vessels are serviced by each respondent, and each of them is accordingly assessed therefor by PMA.

(Ex. A. Complaint 5-6)

23a

Exhibit A

VIII.

Respondents, and each of them, have been assessed by PMA, as aforesaid, and each has paid contributions to the Mechanization Fund in connection with vessels for which each has performed stevedore and/or terminal and/or related services. However, although assessments have been made by libelant against respondents, and each of them, for other such contributions due, respondents, and each of them, have failed to make such other contributions to the Mechanization Fund, and following demand by PMA has each without lawful reason refused and continues to refuse to do so.

[6] IX.

Libelant has performed all conditions required of it under the aforesaid Plan and its By-Laws and has demanded of respondents, and each of them, that payment be made of the respective delinquent contributions to the Mechanization Fund. Respondents, and each of them, have, nevertheless, failed and refused to make such contributions and continue to fail and refuse to do so. There is now due, owing and unpaid from each respondent to libelant, PMA, as collection agent for said Mechanization Fund, the sum set opposite the name of each respondent as follows, no part of which has been paid:

Marine Terminals Corporation	\$30,687.43
Marine Terminals Corporation (of Los Angeles)	36,316.84
Associated-Banning Company	3,740.31
California Stevedore and Ballast Company	2,170.00
Seattle Stevedore Co.	6,240.87
Brady Hamilton Stevedore Co.	6,551.41
	<hr/>
	\$85,706.86

(Ex. A. Complaint 6-7)

24a

Exhibit A

X.

Obligations of respondents to make such contributions as aforesaid accrue, and will continue to accrue, as each respondent services vessels as hereinabove described. Although each respondent has paid a part of such contributions and libelant is informed and believes will continue to do so as the same accrues, libelant is informed and believes that each respondent will continue to refuse to pay part of such contributions as the same accrue. The amount set out in Article IX above is the current delinquency of each. Libelant, therefore, prays leave to amend this libel at time of trial of this case to insert the amount of such delinquency then current as to each respondent.

XI.

All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

[7] WHEREFORE, libelant prays that process in due form of law according to the practices of this Court in cases of admiralty may issue against each respondent. That each respondent be cited to appear and answer all and singular the matters aforesaid, and that this Court may be pleased to decree the payment of libelant's claim as to each respondent in the amounts aforesaid, together with interest and costs, and that libelant may have such other and further relief as to the Court may seem proper.

Dated: August 13th, 1962.

EDWARD D. RANSOM,
GARY J. TORRE,
LILLICK, GEARY, WHEAT, ADAMS & CHARLES,
Proctors for Libelant, Pacific
Maritime Association.

(Ex. B. Complaint 1)

25a

**Exhibit B, Annexed to Foregoing Complaint
(Answer to Libel)**

[1] McCUTCHEON, DOYLE, BROWN & ENERSEN
RUSSELL A. MACKAY
BRYANT K. ZIMMERMAN
601 California Street
San Francisco 8, California
Telephone: YUKon 1-3400
Proctors for respondents
Marine Terminals Corporation and
Marine Terminals Corporation
(of Los Angeles)

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

[SAME TITLE]

ANSWER TO LIBEL

Come now respondents Marine Terminals Corporation, a corporation and Marine Terminals Corporation (of Los Angeles) a corporation, and answering the libel herein admit, deny and allege as follows:

I.

Admit the allegations of Article I.

II.

Admit the allegations of Article II, so far as applicable to these respondents.

(Ex. B. Complaint 2)

26a

Exhibit B

[2] III.

Admit the allegations of Article III.

IV.

Admit the allegations of Article IV.

V.

Admit the factual allegations of Article V and allege that the assessments for the benefit of the Mechanization Fund are made on the understanding that the employer can lawfully collect the amount of the assessment from the carrier or cargo owner for whom the employer performs the stevedore and terminal services.

VI.

Admit the allegations of Article VI.

VII.

Admit the factual allegations of Article VII.

VIII.

Admit that they have paid contributions to the Mechanization Fund in connection with services relating to all vessels other than certain vessels carrying automobiles, particularly vessels chartered to Volkswagenwerk A.G., which contends that the Supplemental Agreement on Mechanization and Modernization, and assessments thereunder are unlawful and that neither libelant nor respondents can lawfully collect assessments pursuant to said Agreement.

IX.

Admit that they have not paid assessments in those cases where the carrier or cargo owner have contended that the assessments are unlawful.

(Ex. B. Complaint 2-3)

27a

Exhibit B

X.

No answer required.

XI.

Admit the maritime jurisdiction of this court.

[3] WHEREFORE, respondents pray that the court determine the lawfulness of the said Supplemental Agreement on Mechanization and Modernization and the assessments thereunder and give such relief as to the court may seem proper.

Dated: September , 1962.

.....
McCUTCHEN, DOYLE, BROWN & ENERSON

.....
RUSSELL A. MACKEY

.....
BRYANT K. ZIMMERMAN

(Ex. C. Complaint 1)

28a

Exhibit C, Annexed to Foregoing Complaint

(Petition to Implead Volkswagenwerk A.G.)

[1] McCUTCHEN, DOYLE, BROWN & ENERSEN
RUSSELL A. MACKAY
BRYANT K. ZIMMERMAN
601 California Street
San Francisco 8, California
Telephone: YUKon 1-3400
Proctors for respondents and petitioners
Marine Terminals Corporation and Marine
Terminals Corporations (of Los Angeles)

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION
No. _____ in Admiralty

PACIFIC MARITIME ASSOCIATION, a non-profit corporation,
Libelant,

vs.

MARINE TERMINALS CORPORATION, a corporation; MARINE
TERMINALS CORPORATION (OF LOS ANGELES), a corporation;
ASSOCIATED-BANNING COMPANY, a corporation; CALIFORNIA
STEVEDORE AND BALLAST COMPANY, a corporation; SEATTLE
STEVEDORE Co., a corporation; and BRADY HAMILTON
STEVEDORE Co., a corporation,

Respondents.

MARINE TERMINALS CORPORATION, a corporation; and MARINE
TERMINALS CORPORATION (OF LOS ANGELES), a corporation,
Petitioners,

vs.

VOLKSWAGENWERK A.G., a corporation,
Respondent impleaded.

Exhibit C

The petition of respondents and petitioners Marine Terminals [2] Corporation, a corporation and Marine Terminals Corporation (of Los Angeles), a corporation, against Volkswagenwerk A.G., in a cause of contract civil and maritime, allege as follows:

I.

That at all times herein mentioned petitioners Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles), were and are corporations organized and existing under the laws of the State of Nevada, with principal offices in San Francisco and Long Beach, respectively.

II.

At all times herein mentioned Volkswagenwerk A.G. was and now is a corporation organized and existing under the laws of Germany with its principal office at Wolfsburg, Germany.

III.

At various times subsequent to January 1, 1961, petitioners have rendered stevedore and terminal services to Volkswagenwerk A.G. in connection with various vessels discharging automobiles at San Francisco and Los Angeles. On account of said services, Pacific Maritime Association has demanded payment of certain amounts as assessments under the Supplemental Agreement on Mechanization and Modernization. Said assessments now amount to approximately \$75,000. Attached hereto is a copy of the Libel filed by Pacific Maritime Association to collect said assessments.

Volkswagenwerk A.G. has agreed to pay each of said assessments as part of petitioners' compensation for said stevedore and terminal services, but has failed and refused to make payments in accordance with said agreement, on the ground that the said Supplemental Agreement on

(Ex. C. Complaint 2-3)

30a

Exhibit C

Mechanization and Modernization and assessments thereunder are unlawful.

IV.

[3] All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

WHEREFORE, petitioners pray that process in due form of law according to the practice of this court in cases of admiralty and maritime jurisdiction may issue against Volkswagenwerk A.G., that said respondent impleaded be cited to appear and answer all of the matters aforesaid and that this court may be pleased to determine the lawfulness of the said Supplemental Agreement on Mechanization and Modernization and assessments thereunder and to decree that said respondent impleaded pay any amounts which petitioners may be required to pay to libelant Pacific Maritime Association, together with interest and costs, and that petitioners may have such other and further relief as to the court may seem proper.

Dated: September , 1962.

.....
McCUTCHEN, DOYLE, BROWN & ENERSEN

.....
RUSSELL A. MACKEY

.....
BEYANT K. ZIMMERMAN

(Ex. D. Complaint 1-2)

31a

**Exhibit D, Annexed to Foregoing Complaint
(Answer of Complainant)**

[1] GRAHAM JAMES & ROLPH
BORIS H. LAKUSTA
ALEXANDER D. CALHOUN, JR.
310 Sansome Street
San Francisco 4, California
YUkon 6-2171

HERZFIELD & RUBIN
WALTER HERZFIELD
40 Wall Street
New York 5, New York

Proctors for Respondent-Impleaded,
Volkswagenwerk Aktiengesellschaft

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

[SAME TITLES]

[2] COMES Now VOLKSWAGENWERK AKTIENGESELLSCHAFT, named herein as Volkswagenwerk A.G., and in answer to the libel and impleading petition on file herein admits, denies and alleges as follows:

ANSWER TO ALLEGATIONS OF LIBEL

I.

Answering Paragraph I of the libel, respondent impleaded is without knowledge or information sufficient to form a belief as to the averments thereof.

Exhibit D

II.

Answering Paragraph II of the libel, respondent impleaded is without knowledge or information sufficient to form a belief as to the averments thereof.

III.

Answering Paragraph III of the libel, respondent impleaded is without knowledge or information sufficient to form a belief as to the averments thereof.

IV.

Answering Paragraph IV of the libel, respondent impleaded is without knowledge or information sufficient to form a belief as to the averments thereof.

V.

Answering Paragraph V of the libel, respondent impleaded is without knowledge or information sufficient to form a belief as to the averments thereof.

VI.

Answering Paragraph VI of the libel, respondent impleaded is without knowledge or information sufficient to form a belief as to the averments thereof.

VII.

Answering Paragraph VII of the libel, respondent impleaded [3] is without knowledge or information sufficient to form a belief as to the averments thereof.

VIII.

Answering Paragraph VIII of the libel, respondent impleaded is without knowledge or information sufficient to form a belief as to the averments thereof.

(Ex. D. Complaint 34)

33a

Exhibit D

IX.

Answering Paragraph IX of the libel, respondent impleaded is without knowledge or information sufficient to form a belief as to the averments thereof.

X.

Answering Paragraph X of the libel, respondent impleaded is without knowledge or information sufficient to form a belief as to the averments thereof.

XI.

Answering Paragraph XI of the libel, respondent impleaded denies the jurisdiction of this Court to determine the validity of the claim of libelant against respondents-petitioners until the validity of the contributions sought to be collected from respondents-petitioners to the extent that they may affect respondent impleaded is determined by the Federal Maritime Commission pursuant to the Shipping Act, 1916, as amended, 46 U.S.C. 801, et seq. (1961).

ANSWER TO ALLEGATIONS OF PETITION TO IMPLEAD

I.

Answering Paragraph I of the impleading petition, respondent impleaded is without knowledge or information sufficient to form a belief as to the averments thereof.

II.

Answering Paragraph II of the impleading petition, respondent impleaded admits the allegations thereof, except that [4] the correct corporate name of respondent impleaded is Volkswagenwerk Aktiengesellschaft.

Exhibit D

III.

Answering Paragraph III of the impleading petition, respondent impleaded admits respondents-petitioners have rendered stevedoring and terminal services to respondent impleaded in connection with various vessels discharging automobiles in San Francisco and Los Angeles; admits that the Pacific Maritime Association has demanded of respondents-petitioners and respondents-petitioners have demanded of respondent impleaded payment of certain amounts as assessments under the said Supplemental Agreement on Mechanization and Modernization; admits that said assessments do now amount to approximately \$75,000.00; admits that respondent impleaded has failed and refused to pay such assessments to respondents-petitioners on the ground they are unlawful; and, except as herein expressly admitted, denies each and every, all and singular, the allegations thereof.

IV.

Answering Paragraph IV of the impleading petition, respondent impleaded denies the jurisdiction of this Court to determine the validity of the claim of respondents-petitioners against respondent impleaded until the validity of the assessments sought to be imposed against respondent impleaded is determined by the Federal Maritime Commission pursuant to the Shipping Act, 1916, as amended, 46 U.S.C. 801, et seq. (1961).

FIRST AFFIRMATIVE DEFENSE TO LIBEL AND
PETITION TO IMPLEAD

Libel and petition to implead fail to state a claim upon which relief can be granted.

Exhibit D

SECOND AFFIRMATIVE DEFENSE TO LIBEL AND
PETITION TO IMPLEAD

I.

Respondent impleaded does not oppose, indeed supports, [5] the objectives of libelant's Plan for the purposes of encouraging introduction of modern methods of cargo carriage and handling, including elimination of restrictive work practices and permitting containerization of cargo as alleged in Article IV of the libel. Moreover, respondent impleaded would be willing to be charged with lawful, non-discriminatory, just and reasonable contributions to the costs of the said Plan.

II.

Respondent impleaded is informed and believes and on the basis of such information and belief alleges that respondents-petitioners and other persons agreed and conspired to impose upon respondents-petitioners the contributions referred to in Paragraph IX of the libel, and upon respondent impleaded the assessments referred to in Paragraph III of the impleading petition as a charge for respondents-petitioners' stevedoring and terminal services.

III.

Respondents-petitioners and the other persons referred to in Paragraph II, above, are persons subject to the Shipping Act, 1916, as amended, 46 U.S.C. 801, et seq. (1961).

IV.

Respondents-petitioners and the other persons referred to in Paragraph II, above, are required by Section 15 of the said Act to file with the Federal Maritime Commission for approval all agreements controlling, regulating, pre-

Exhibit D

venting, or destroying competition, or in any manner providing for an exclusive, preferential, or co-operative working arrangement, which includes the fixing of charges for services.

V.

The agreement and conspiracy to impose upon respondents-petitioners the contributions and upon respondent impleaded the assessments referred to in Paragraph II, above, is an agreement [6] requiring Section 15 approval by the Federal Maritime Commission; the said agreement has neither been filed with nor approved by the Commission and is therefore illegal and void and cannot lawfully be carried out.

VI.

The determination of whether respondents-petitioners and the other persons referred to in Paragraph II, above, have entered into an agreement subject to Section 15 of the Shipping Act, 1916, as amended, 46 U.S.C. 801, et seq. (1961), as hereinabove alleged, is a matter within the primary jurisdiction of the Federal Maritime Commission, and, accordingly, the issue of the validity of the contributions and assessments under Section 15 should be referred to the Commission and this libel and petition to implead dismissed or stayed until the decision of the Commission.

THIRD AFFIRMATIVE DEFENSE TO LIBEL AND
PETITION TO IMPLEAD

I.

Respondent impleaded refers to Paragraphs I, II and III of its Second Affirmative Defense and incorporates the same herein by such reference.

(Ex. D. Complaint 6-7)

37a

Exhibit D

II.

Respondents-petitioners and the other persons referred to in Paragraph II of the Second Affirmative Defense of respondent impleaded, and each of them, are subjecting the automobile cargoes of respondent impleaded to undue or unreasonable prejudice or disadvantage in violation of Section 16 of the Shipping Act, 1916, as amended, 46 U.S.C. 815 (1961), by imposing upon respondent impleaded the said assessments as a charge for terminal and stevedoring services rendered in connection with this particular description of cargo, to the extent that respondent impleaded's automobile cargoes are thereby burdened with a disproportionate [7] share of the costs of the Plan referred to in Article IV of the libel as compared with other cargoes.

III.

The determination of whether the said assessments are in violation of Section 16 as hereinabove alleged is a matter within the primary jurisdiction of the Federal Maritime Commission and, accordingly, the issue of the validity of the assessments under Section 16 should be referred to the Commission and the libel and petition to implead dismissed or stayed until the decision of the Commission.

**FOURTH AFFIRMATIVE DEFENSE TO LIBEL AND
PETITION TO IMPLEAD**

I.

Respondent impleaded refers to Paragraphs I, II and III of its Second Affirmative Defense and incorporates the same herein by such reference.

II.

The practices of respondents-petitioners and the other persons referred to in the Second Affirmative Defense of

Exhibit D

respondent impleaded, and each of them, in attempting to impose upon respondent impleaded the said assessments as a charge for terminal stevedoring services are unjust and unreasonable practices in violation of Section 17 of the Shipping Act, 1916, as amended, 46 U.S.C. 816 (1961), to the extent that respondent impleaded's automobile cargoes are thereby burdened with a disproportionate share of the costs of the Plan referred to in Article IV of the libel as compared with other cargoes.

[8] III.

The determination of whether the said practices are in violation of Section 17 as hereinabove alleged is a matter within the primary jurisdiction of the Federal Maritime Commission and, accordingly, the issue of the validity of the practices under Section 17 should be referred to the Commission and the libel and petition to implead dismissed or stayed until the decision of the Commission.

FIFTH AFFIRMATIVE DEFENSE TO LIBEL AND
PETITION TO IMPLEAD.

I.

Respondent impleaded refers to Paragraphs I, II and III of its Second Affirmative Defense and incorporates the same herein by such reference.

II.

By reason of the foregoing agreement and conspiracy, respondents-petitioners and the other persons referred to in the Second Affirmative Defense of respondent impleaded seek to impose upon respondent impleaded a fixed charge in the form of an assessment in restraint of trade and commerce with foreign nations in violation of Section 1 of the Sherman Anti-Trust Act, 15 U. S. C. Section 1.

(Ex. D. Complaint 8-9)

39a

Exhibit D

WHEREFORE, respondent impleaded prays that respondents-petitioners take nothing by their petition to implead and that respondent impleaded have its costs herein; and that respondent impleaded have such other and further relief as the Court may deem proper.

[9] Dated at San Francisco, California, this 31st day of October, 1962.

GRAHAM JAMES & ROLPH

By ALEXANDER D. CALHOUN
Proctors for Respondent
Impleaded, Volkswagenwerk
Aktiengesellschaft

HERZFIELD & RUBIN

WALTER HERZFIELD

of Counsel.

(Answer 1-2)

40a

Answer to Complaint

(Filed February 18, 1963)

[1] BEFORE THE
FEDERAL MARITIME COMMISSION

[SAME TITLE]

Respondents Marine Terminals Corporation and Marine Terminal Corporation (of Los Angeles) answer the complaint herein as follows:

I

Deny that complainant is entitled to bring this proceeding under Section 22 of the Shipping Act, 1916.

II

Admit the allegations of Paragraph II.

III

Admit that respondents were and are Nevada corporations with principal offices in San Francisco and Long Beach, as alleged; admit that they are in the business of furnishing terminal and stevedoring services; admit that such services are, in some cases, [2] furnished in connection with common carriers by water; admit that such services have been provided to complainant in connection with discharging its automobile cargoes at San Francisco and Los Angeles, but deny that such services were rendered in connection with common carriers by water; and except as herein admitted or alleged, deny the allegations of Paragraph III; and further allege that the Commission

(Answer 2-3)

41a

Answer to Complaint

has no jurisdiction over these respondents, which are not common carriers, do not furnish terminal facilities and are not "other persons subject to" the Shipping Act, 1916.

IV

Admit that they are members of Pacific Maritime Association, a non-profit corporation organized under the laws of the State of California; admit that they have included as part of their charges for services the amounts of assessments under the Supplemental Agreement on Mechanization and Modernization; and except as herein admitted, deny the allegations of Paragraph IV.

V

Deny the allegations of Paragraph V.

VI

Deny the allegations of Paragraph VI.

VII

Deny the allegations of Paragraph VII.

VIII

Deny the allegations of Paragraph VIII.

[3] IX

Admit that complainant has maintained that assessments under the Supplemental Agreement on Mechanization and Modernization are unlawful; admit that they impleaded complainant in the suit in the United States District Court commenced by Pacific Maritime Association; admit that they have sought and still seek to collect from complainant the assessments pursuant to said agree-

(Answer 3)

42a

Answer to Complaint

ment; admit that complainant moved for and obtained a stay of proceedings in the United States District Court; admit the filing of the documents attached to the complaint as Exhibits A-K; and except as herein admitted, deny the allegations of Paragraph IX.

WHEREFORE, respondents pray that the Commission determine that it has no jurisdiction with respect to the matters alleged in the complaint, that the complaint be dismissed, and that the respondents have such other and further relief as may be appropriate.

Dated: February 15, 1963.

.....
McCUTCHEN, DOYLE, BROWN & ENERSEN
.....

BRYANT K. ZIMMERMAN
Attorneys for Respondents Marine Terminals
Corporation and Marine Terminals Corpora-
tion (of Los Angeles)

(Pet. P.M.A. to Intervene 1-2)
43a

**Petition of Pacific Maritime Association to Intervene
in Opposition to the Complaint**

(Filed February 21, 1963)

[1] BEFORE THE
FEDERAL MARITIME COMMISSION

[SAME TITLE]

Pacific Maritime Association (PMA) is a non-profit association existing under the laws of the State of California with its principal office in San Francisco, California, formed for the primary purpose of representing its members in collective bargaining and labor relations with labor unions who in turn represent for collective bargaining crew members employed aboard American-flag dry cargo vessels and employees engaged in longshore, terminal and related operations.

Rule 5(n) of the Commission's Rules of Practice and Procedure provide that a petition for intervention shall set forth the interest of petitioner, the grounds of the proposed intervention and the position of the petitioner in the proceeding. This petition shall proceed to do so.

**[2] Petitioner's Substantial Interest and Grounds
for Intervention**

Pacific Maritime Association's substantial interest in the captioned complaint proceedings and grounds for intervention include the following:

1. The proceeding could possibly affect the entire \$29,-000,000 Mechanization and Modernization program negotiated between the PMA and the longshore union.

*Petition of Pacific Maritime Association to Intervene
in Opposition to the Complaint*

2. The Complaint could possibly result in the Federal Maritime Commission for the first time in its history assuming jurisdiction in the field of maritime collective bargaining, which petitioner firmly believes is beyond the jurisdiction of the Commission and which would adversely affect the industry by upsetting traditional patterns of collective bargaining.

3. It is alleged in the Complaint that the named respondents and PMA and certain members thereof have entered into a conspiracy, agreement or understanding to impose charges upon complainants. As direct charges are thus made against petitioner, petitioner should be permitted to participate and have the opportunity to prove such charges false.

4. The Complaint alleges that petitioner, PMA, and respondents have entered into an unfiled and unapproved Section 15 agreement and thereby violated the Shipping Act, 1916. Petitioner through intervention should be afforded the right to contest such allegations.

5. The Complaint alleges agreements between petitioner, its members and respondents resulting in violations of Sections [3] 16 and 17 of the Shipping Act, 1916, and petitioner through intervention should be afforded the right to prove such charges false.

6. Petitioner, PMA, commenced the litigation in the District Court of the United States for the Northern District of California, Southern Division, by a libel against respondents here for collection of contributions due to the aforesaid Fund. That action has been stayed in order to permit complainants to proceed with this complaint proceeding. Petitioner's rights to collect sums due are, accordingly, stayed pending this litigation and petitioner

*Petition of Pacific Maritime Association to Intervene
in Opposition to the Complaint*

should be entitled to participate in this complaint proceeding in order to protect its rights in the District Court and to protect itself against undue delay in disposition of this proceeding.

Background of Complaint Action

The Complaint seeks to invoke the jurisdiction of the Federal Maritime Commission with respect to collective bargaining negotiations and agreements as to which the Commission has no authority, has never heretofore and should not now inject itself.

The PMA, representing maritime employers, and the International Longshoremen & Warehousemen's Union (ILWU), representing employees, bargain with each other with respect to wages, hours, working conditions and fringe benefits, including vacation, welfare and pension plans. In such negotiations the Union contended that containerization, palletization and other modern [4] methods of cargo handling which had recently been introduced and were being introduced resulted in a reduction of work of longshore and marine clerk employees. In order to satisfy the Union and permit the mechanization and modernization program to go forward, there was negotiated over a period of many months a complex program which would result in a \$29,000,000 fund accumulated during a period of five years for the benefit of such workers. This fund is entitled the "PMA-ILWU Mechanization and Modernization Fund" (the Fund). The agreement to provide such Fund was negotiated and entered into between PMA on behalf of its members, and the ILWU on behalf of its members, in the same way that wage raises, vacation allowances and other fringe benefits are negotiated.

The methods by which the PMA would raise such funds was the subject of long and intensive study. It was finally determined by agreement between the members of the PMA

*Petition of Pacific Maritime Association to Intervene
in Opposition to the Complaint*

that the contributions making up the Fund would be made by the stevedoring companies, who are the direct employers of longshore labor, on the basis of 27½¢ per ton, weight or measurement, handled by such stevedoring companies and would be contributed by the direct employers of marine clerks on a manhour basis (historic distinctions relating to bulk and certain coastwise lumber cargoes were of necessity recognized and a different rate applied). There is not and never has been any agreement between the PMA or anyone else or between the members of PMA as to the source from which the members who are such direct employers would derive the funds with which to make such contributions. Whether such [5] employers would absorb such contributions or would bill and collect all or any part to their customers, is entirely a matter for such direct employers.

Several members of PMA became delinquent in their contributions and in order to collect such delinquencies PMA brought a libel in admiralty in the United States District Court against respondents Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles) and others. Respondents answered stating in effect they considered such contributions were valid and were due and owing by them but they had endeavored to obtain their contributions to the Fund by charging the amount thereof against their customers and that one such customer, Volkswagenwerk Aktiengesellschaft, complainant in this proceeding, had not paid and had contended such charges against them were in violation of the Shipping Act, 1916. Respondents therefore impleaded complainant Volkswagenwerk, who moved for and obtained the stay order previously referred to. Both respondents in the proceeding and petitioner, PMA, contested the motion for stay on the grounds that the matters alleged are not within the jurisdiction of the FMC. It should be noted that the order of

*Petition of Pacific Maritime Association to Intervene
in Opposition to the Complaint*

the United States District Court (Exhibit I to the Complaint) is based primarily on the grounds that it is up to the Federal Maritime Commission itself rather than the District Court to determine whether it has jurisdiction over the matters claimed by complainant.

[6] Position of Petitioner

1. The subject matter of the Complaint is outside the jurisdiction of the Federal Maritime Commission. As appears from the foregoing sketch of the background of the proceeding, the Complaint could involve the FMC in maritime labor relations and collective bargaining. The charges which respondents have assessed against complainant are in fact no different from charges which could result from a wage increase, change in authorized union holidays, extension of vacation periods, welfare funds, or any other increased costs which a stevedore company might add to its bills to its customers as result of collective bargaining between the employers and unions. This is a subject over which the FMC is not granted jurisdiction by Congress and is, we believe, a subject as to which the FMC would not presume to undertake to regulate.

2. Petitioner states positively and without equivocation in this verified petition that there is not and never has been any agreement, understanding or arrangement between respondents and petitioner or between any direct employers of the longshore and marine clerk labor and PMA and/or between any members thereof to impose upon complainant or upon the automobile cargoes of complainant any charge or assessment whatever, whether relating to the contributions which the direct employers make into the Mechanization and Modernization Fund or otherwise. In view of petitioner's positive denial that any such agreement or understanding exists, any question as to whether

*Petition of Pacific Maritime Association to Intervene
in Opposition to the Complaint*

if such an agreement did exist it would be subject to the jurisdiction of [7] the Commission under Section 15 is moot, but petitioner's further position, as an academic matter, is that such an agreement would not be within Section 15.

The agreements relating to the Mechanization & Modernization Fund which do exist, namely, the agreement between the PMA and the ILWU, to establish the Fund, and the intra-association agreement between its members for contributions to the Fund, are so clearly outside Section 15 considerations as to make discussion thereof absurd, nor are there any allegations of the Complaint with respect to such agreements.

3. The Federal Maritime Commission through its staff has investigated and resolved the contention of a Section 15 agreement apparently to its satisfaction. By letter of September 28, 1961, Mr. Stigler, then Chief, Office of Regulations, Federal Maritime Commission, made inquiry concerning the Mechanization & Modernization Fund. A copy of that letter is attached as Exhibit A. The inquiry was subsequently followed by a letter of Mr. Leroy Fuller, Director, Bureau of Foreign Regulations. At the time of the original inquiry the plan was still in its formative stage. The Commission's inquiries were answered in full by letter of December 14, 1961. Copy attached hereto as Exhibit B. No further communication was received from the Commission concerning the matter.

4. The allegations of the Complaint and the prayer of the Complaint charging respondents with alleged violations of Sections 16 and 17 of the Shipping Act, 1916, are based upon [8] the alleged agreement between respondents and PMA and its members to assess charges against complainant allegedly disproportionate to charges assessed against other cargo resulting in a claim of unjust dis-

(Pet. P.M.A. to Intervene 8)
49a

*Petition of Pacific Maritime Association to Intervene
in Opposition to the Complaint*

crimination under Section 16 and unreasonable practice under Section 17. Petitioner reiterates its denial that any such agreement exists. The method of allocation by PMA to obtain contributions to the Fund, including the contributions of respondents here, is in fact not challenged by the Complaint and is, in any event, outside the jurisdiction of the Commission. Petitioner alleges, nevertheless, that the method of allocation of contributions adopted after months of study was designed to and does in fact treat all carriers and cargo alike. It is in fact the most feasible plan which could be devised to avoid discriminatory treatment. The method by which the members of PMA pass on, if at all, such additional expense is, as previously stated, no concern of petitioner.

WHEREFORE, petitioner prays:

1. That its Petition to Intervene be granted.
2. That the Commission determine that it has no jurisdiction with respect to the matters set forth in the Complaint.
3. That the Complaint be dismissed.

Dated at San Francisco, California, February 18, 1963.

PACIFIC MARITIME ASSOCIATION,
Petitioner

By J. Paul St. Sure
J. PAUL ST. SURE
President

Edward D. Ransom
EDWARD D. RANSOM
GARY J. TORRE
Gary J. Torre

Lillick, Geary, Wheat, Adams & Charles
LILICK, GEARY, WHEAT, ADAMS & CHARLES
Attorneys for Petitioner

(Ex. A. Petition 1)

50a

Exhibit A, Annexed to Foregoing Petition

[1] FEDERAL MARITIME COMMISSION
Washington 25, D. C.

In reply refer to:
Li7-3(26):079
September 28, 1961

RECEIVED
Oct. 2, 1961
Pacific Maritime Association

Air Mail

Pacific Maritime Association
16 California Street
San Francisco, California

Gentlemen:

It is our understanding that the Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union have entered upon an arrangement whereby the Pacific Maritime Association members have agreed to provide approximately \$5,000,000 a year for five years in the establishment of a modernization and improvement fund for the benefit of above-mentioned union.

It is further our understanding that the method used to financially provide for the fund is by assessment of an arbitrary of 27½¢ per ton weight or measurement *against all cargo* discharged at west coast terminals. Please inform this Office of the manner in which this assessment is billed, i.e., against whom is the assessment made, what is it called, and how is it brought to the attention of the person paying it. Further please let us know whether this assessment is published in any individual common carrier, conference, or terminal tariffs.

(Ex. A. Petition 2)

51a

Exhibit A

We presume that the 27½¢ charge was arrived at by agreement among all of the members of the Pacific Maritime Association. Such agreement to fix a rate appears to be cognizable by section 15 of the Shipping Act, 1916. It is, therefore, requested that the Pacific Maritime Association file with this Commission a true copy, or, if oral, a true and complete memorandum of the agreement wherein its members by cooperative arrangement agreed to the assessment of the rate as noted above.

Additionally, we request that you provide this Office with a copy of the contract between the International Longshoremen's and Warehousemen's Union and Pacific Maritime Association for the current year, bylaws of the Pacific Maritime Association, membership record of the Pacific Maritime Association, and a copy or memorandum of the Pacific Maritime Association's authorization to its officials to negotiate with the International Longshoremen's and Warehousemen's Union.

You may wish to have your attorney provide us with his opinion regarding the agreement herein under discussion.

[2] Upon receipt of the referred to agreement, it will be examined with respect to compliance with said Section 15, copy of which is enclosed.

Sincerely yours,

WILLIAM A. STIGLER
William A. Stigler
Chief, Office of Regulations

Enclosure

(Ex. B. Petition 1)

52a

Exhibit B, Annexed to Foregoing Petition

[1] (Letterhead of)

LILLICK, GEARY, WHEAT, ADAMS & CHARLES
Attorneys at Law
San Francisco 4, California

December 14, 1961

Mr. Leroy F. Fuller
Director, Bureau of Foreign Relations
Federal Maritime Commission
Washington 25, D. C.

Re: PMA Mechanization Plan
Your Ref.: L17-3(26):30

Dear Mr. Fuller:

The procedures with respect to the PMA-ILWU Mechanization Fund have been sufficiently determined to permit us now to reply fully to Mr. Stigler's letter of September 28, 1961 addressed to the Pacific Maritime Association. We, as counsel for PMA, have been intimately acquainted with the mechanization plan since its inception and PMA has, accordingly, referred your inquiry to us.

We believe the information which you have apparently received concerning this program has necessarily led to a misunderstanding of its basic concepts. From your letter it would appear that it is your understanding there will be a direct assessment, of 27½¢ per ton, weight or measurement, against shippers or consignees of cargo in the nature of a tariff item concerning which there is some understanding or agreement between carriers. If this is your understanding, you have been misinformed.

The Pacific Maritime Association (PMA) is an association comprised of employers who designate it to represent

Exhibit B

them for the purpose of collective bargaining with various maritime unions, including the International Warehousemen & Longshoremen's Union (ILWU). The PMA, representing the employers, and the ILWU, representing employees, bargain with respect to wages, hours, working conditions and fringe benefits, including vacations, welfare and pension plans for the benefit of longshoremen and marine clerks. The mechanization and modernization fund to be established for longshoremen and marine clerks is but one of many fringe benefits that have been negotiated or are being negotiated by the PMA and ILWU.

[2] The plan in question is complex. In essence it is that over a period of five and one-half years there will be contributed to the fund by the employers a total of \$29,000,000 for the employees' benefit. Since a minor portion of these employees are in the category of marine clerks, the stevedore companies, who are the direct employers of the longshoremen, will be contributing into the fund at a ratio of about 8 to 1 in relation to terminal companies, who are the direct employers of the marine clerks.

In the initial planning the fund was to be raised by the direct employers of the employee-beneficiaries on a tonnage basis, it being considered that the goal would be reached by payment into the fund of a total of 27½¢ per ton of general cargo and a lesser rate for bulk cargoes. This system has been revised, so that employers of marine clerks will contribute on a manhour basis and by employers of longshoremen on a tonnage basis; the statistical result being the total equivalent of 27½¢ per ton at present. It can be readily seen that the rate of contribution during the five and one-half year period may adjust up or down depending upon the volume of traffic.

There is no agreement between PMA and the ILWU nor between the PMA members as such as to how the direct employers of the longshoremen are to raise the funds for their contributions. Realistically, it is expected they will,

Exhibit B

where possible, pass this on to the ocean carriers. How this is passed on to the carrier, if at all, is a matter of individual contract between the stevedore company and the steamship company, or in the case of f.i.o. charters, between the stevedore company and the charter-shipper. In most instances, it is probably a simple matter for the stevedore companies to add the amount per ton for the mechanization fund, specified as such, directly on their invoices to the ocean carrier for whom the cargo is handled in the same way as other items of employee benefits, such as welfare, pension and vacation costs. If the stevedore is not able to obtain an agreement with his customer to reimburse him for this item, he will have to absorb it because he will nevertheless owe the contribution to the fund.

Essentially the same situation pertains with respect to the terminal companies' contribution relating to marine clerks. How the clerks' employers raise the fund is no part of any agreement or understanding with the ILWU or with PMA. Some may decide to absorb the amount and others to pass it on to the carriers. It can be expected that those who are members of the California Association of Port Authorities will determine [3] this matter as an association within their Section 15 agreement. Just how this might be reflected in the terminals' tariffs, if at all, has not to or knowledge been determined by them.

With respect to the ocean carriers which may bear the ultimate cost of the mechanization fund, that item is no different than vacation, welfare, pension, unemployment insurance and other similar items of costs which the ocean carrier pays directly to a stevedoring company or which are included within the charges paid to terminal companies in connection with loading or discharging ships. It will increase initially the cost to the carriers of transporting cargo, just as an increase in wages increases such costs. However, the mechanization and modernization agreement is for the purpose of facilitating mechanization of cargo

Exhibit B

handling and eliminating restrictive work practices with the expectation of ultimate economies in the carriers' operations.

The PMA and the ILWU are not involved in, or directly concerned with, the source from which ocean carriers derive the amounts which may be paid by the carriers to the stevedoring or terminal companies. There is no agreement or understanding, formal or informal, between the PMA and ILWU or between the members of the PMA as to the source from which the carriers will obtain the funds to pay this increased cost. Any changes in carriers' rates resulting directly or indirectly from this cost would be a matter for usual rate making procedures through conferences, but is no part of a PMA function and does not relate to membership in PMA.

The memorandum of agreement on mechanization and modernization between PMA and ILWU is not between two parties subject to the Shipping Act, 1916, as amended. So far as we have been able to ascertain, an agreement between parties subject to the Act to form an association of employers, such as PMA, to represent them for the purpose of collective bargaining with unions representing off-shore or shoreside workers or collective agreements reached thereafter as to wages, benefits or working conditions, have never even been suggested as falling within the scope of Section 15. If a contrary view is now adopted, the Federal Maritime Commission will embark on the unique undertaking of passing on all collective bargaining agreements and labor dispute settlements in the shipping industry. While such an agreement, like any agreement of any kind between carriers, is necessarily a "cooperative working agreement," it is neither remotely connected with, nor bears any resemblance to, the rate making anti-trust matters specifically recited in Section 15 and at which the section is aimed.

Exhibit B

We believe that the foregoing explanation should satisfy you that the modernization and mechanization plan is [4] far removed from any considerations with respect to Section 15. As a result of apparent misinformation about the plan and the Association you have asked for a number of documents and records which we are enclosing. So that you may be fully conversant with the mechanization and modernization plan, its background and operation, we are enclosing copies of a number of other documents which we think may be pertinent. The enclosures are as follows:

1. Memorandum of Agreement on Mechanization and Modernization, 10/18/60
2. ILWU-PMA Supplemental Agreement on Mechanization and Modernization, Schedules A, B and C thereof
3. ILWU-PMA Welfare Fund Supplemental Declaration of Trust
4. ILWU-PMA Vesting Benefit Trust—Trust Indenture
5. ILWU-PMA Supplemental Wage Benefit Trust—Trust Indenture
6. Two ILWU-PMA Letter Agreements dated November 15, 1961
7. U. S. Treasury Department letter to Schirmer Stevedoring Co., Ltd. 9/15/61 (We believe this letter contains a concise summary of the program.)
8. U. S. Treasury Department letter to States Steamship Company 9/15/61
9. Copy of By-Laws of PMA
10. List of members of PMA subject to the Modernization Agreement.

(Ex. B. Petition 4)

57a

Exhibit B

We trust that these documents together with our comments herein answer the inquiry contained in your letter of September 28, 1961. If there is any further information you require, please advise. Otherwise, we should appreciate your advising us of your concurrence in our views that neither the mechanization and modernization plan nor its operation fall within the scope of Section 15.

Very truly yours,

LILLICK, GEARY, WHEAT, ADAMS & CHARLES
EDWARD D. RANSOM

Encs.

8-12-20129

cc: PMA

Attn: Mr. Press Lancaster

**Reply of Complainant to Petition of Pacific Maritime
Association to Intervene in Opposition
to the Complaint**

(Filed March 8, 1963)

[1] BEFORE THE
FEDERAL MARITIME COMMISSION

[SAME TITLE]

Complainant replies to the allegations of the petition to intervene of Pacific Maritime Association (PMA) as follows:

I

Complainant is without knowledge or information sufficient to form a belief with respect to the truth of the description which PMA gives of itself in the first paragraph of its petition.

II

With respect to the allegations under the heading "Petitioner's Substantial Interest and Grounds for Intervention" complainant denies the allegations of paragraphs 1 and 2 under such heading; avers, as is alleged in the Complaint and as is [2] more particularly set forth below, that its complaint is directed solely against the imposition upon complainant of an excessive and discriminatory charge for terminal and stevedoring services and facilities to raise amounts required for the performance of PMA's agreement with the International Longshoremen & Warehousemen's Union (ILWU).

(Reply of Compl't to Pet. P.M.A. 2-3)
59a

Reply of Complainant to Petition of Pacific Maritime Association to Intervene in Opposition to the Complaint

III

With respect to the allegations under the heading "Background of Complaint Action" complainant:

- (1) Denies the allegations of the first paragraph under such heading;
- (2) Replying to the second paragraph under such heading, admits the making of an agreement between PMA and ILWU for the creation of a so-called "PMA-ILWU Mechanization and Modernization Fund" (the Fund); denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of the second paragraph under such heading;
- (3) Replying to the third paragraph under such heading, admits that an agreement or understanding or arrangement was made among respondents, PMA and certain members of PMA as to how the contributions to the Fund would be made; admits that the contributions for bulk cargo and certain coastwise lumber cargoes were assessed [3] at different rates or by different methods than other cargo, including vehicles; avers that although distinctions relating to bulk and certain lumber cargoes were made by PMA, no such distinction was recognized as to unboxed automobiles, although, as PMA and respondents knew, the unboxed automobiles of complainant were and are discharged by stevedores and terminals at a per unit cost; avers that the assessment for the Fund against complainant's automobiles were made on a measurement basis, which, if passed on by respondents to complainant, results in a disproportionately high, discriminatory and ex-

(Reply of Compl't to P.M.A. 3-4)

60a

Reply of Complainant to Petition of Pacific Maritime Association to Intervene in Opposition to the Complaint

cessive charge against such automobiles; avers that the necessary and inevitable effect and result of such agreement or understanding or arrangement, as is more particularly set forth below, was and is to impose such disproportionately high, discriminatory and excessive charge on the unboxed automobiles of complainant and on vehicles generally; denies that as a practical or economic matter, as respondents, PMA and certain of its members well know, the direct employers of longshore labor handling complainant's automobiles or vehicles generally can absorb such contributions or adopt any other [4] course than to collect such contributions from the carrier or shipper of such vehicles; except as admitted, averred or denied, denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of said third paragraph; and

(4) Replying to the fourth paragraph under such heading, admits that the proceedings reflected in Exhibits A through K to the complaint herein took place; denies any and all other allegations.

IV

With respect to the allegations under the heading "Position of Petitioner" complainant:

(1) Denies the allegations of paragraph 1 under such heading; avers that the charges which respondents have assessed against complainant are in fact different than the usual increased charges for higher wages and similar increased costs resulting from collective bargaining between employers and unions in that the usual increased charges referred to are

(Reply of Compl't to Pet. P.M.A. 4-6)
61a

Reply of Complainant to Petition of Pacific Maritime Association to Intervene in Opposition to the Complaint

assessed by respondents against customers equally on a man-hour basis; avers that the assessment by PMA for the Fund is made on the basis of weight or measurement and when passed on to complainant by respondents [5] for discharging unboxed automobiles, results in a disproportionately high, discriminatory and excessive charge for such services as compared to the amounts charged to other customers of respondents;

(2) Denies the allegations of paragraphs 2 and 4 under such heading; and

(3) Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 3 under such heading; avers that such allegations, even if true, do not deprive complainant of its right to present evidence in support of its complaint that the present agreed method of assessments, with its necessary economic effect on rates for handling complainant's vehicles, constitutes an agreement, understanding or arrangement subject to section 15 of the Shipping Act of 1916 and that the resulting rates violate section 16 and section 17 of said Act.

V

While the foregoing reply places in issue the material allegations of PMA's petition, the petition gives such a distorted and inaccurate picture of the issues raised by the complaint that a further reply by complainant is necessary.

[6] Complainant has consistently stated as a matter of record, and reiterates that it does not claim the agreement made between PMA and ILWU, or the Fund provided for by such agreement, is illegal or subject to Commission

Reply of Complainant to Petition of Pacific Maritime Association to Intervene in Opposition to the Complaint

jurisdiction. To assert as PMA's petition does that the complaint is an attempt to subject this agreement concerning labor relations and collective bargaining to Commission jurisdiction is completely misleading.

The issues raised by the complaint relate exclusively to the method which respondents, PMA and certain members of PMA have adopted to raise the amounts that must be paid to the Fund provided for in PMA's agreement with ILWU. The internal agreements, understandings or arrangements made among the respondents, PMA and certain of its members to raise such amounts are of no concern to ILWU, and have nothing to do with labor relations or collective bargaining. But inasmuch as these internal matters of necessity result in rates and practices with respect to stevedoring and terminal services and facilities which are discriminatory, unfair, preferential, unreasonably prejudicial or unjust, they are properly within Commission jurisdiction. The assertion by PMA that its verified denial of an agreement or understanding or arrangement renders this issue [7] "moot" at most merely raises an issue of fact on this subject for determination by the Commission on the evidence presented.

PMA insists in its petition that the method by which its employer-members who furnish stevedoring or terminal services and facilities pass on the additional expense of the assessments PMA and its members have established is of no concern to PMA. It seeks in this manner to escape from responsibility for or participation in the establishment of a discriminatory assessment as to complainant's automobiles and vehicles generally. To do so, it must and does ignore the fact that as an economic and practical necessity the assessments it has established must be passed on by its employer-members directly to the carrier or shipper. If the assessment is disproportionately high against cer-

(Reply of Compl't to Pet. P.M.A. 7-8)
63a

Reply of Complainant to Petition of Pacific Maritime Association to Intervene in Opposition to the Complaint

tain cargoes (in the case of unboxed automobiles increasing the cost of their discharge approximately 22 per cent to 32 per cent as compared to an average increase to other cargo of only approximately 2½ per cent) no employer-member can absorb the increase. Neither can it spread the increase over other cargo handled and still compete with stevedores or terminal operators who handle no vehicles or only a small amount of them. In practical effect, as the respondents, PMA and its employer-members well know, the disproportionately high assessment against unboxed automobiles *must* be passed on to the carrier or shipper if the stevedore or terminal operator is to remain in business. When such a [8] situation is brought about by the majority vote of PMA and its members there exists an agreement, understanding or arrangement within section 15 of the Shipping Act, which fixes or regulates transportation rates unjustly and in a discriminatory and unfair manner. An express written agreement under such circumstances need not exist if the action of PMA and its members, including respondents, presents a "conscious parallelism" among such members from which a concert of action and an understanding must be inferred that, in the absence of exemption as provided for under the Shipping Act of 1916, would contravene the antitrust laws of the United States.

The allegation of the petition that the "method of allocation by PMA to obtain contributions to the Fund including the contributions of respondents here, is in fact not challenged by the Complaint" is simply not true; the very contrary is the case. Equally misleading is the statement in the petition that respondents in their Answer to Libel (Exhibit B to the Complaint) in the litigation before the United States District Court "in effect * * * considered such contributions were valid and were due and owing

(Reply of Compl't to P.M.A. 8-9)

64a

Reply of Complainant to Petition of Pacific Maritime Association to Intervene in Opposition to the Complaint

by them." The Answer to Libel alleges that the assessments for the Fund are made "on the understanding that the employer can lawfully collect the amount of the assessment from the carrier or cargo owner for whom the employer performs the stevedore and terminal services" (Exhibit B, par. V) [9] and admits that respondents have not paid assessments where the carrier or cargo owner has contended that the assessments are unlawful (Exhibit B, par. IX). These are hardly admissions that the contributions are valid and due and owing; rather they are reservations by respondents of their rights should the contributions be determined to be invalid.

WHEREFORE, complainant prays that after due hearing and investigation complainant be granted the relief sought in the complaint.

Dated at San Francisco, California, this 7th day of March, 1963.

Respectfully submitted,

PETER CURTIS
Peter Curtis

.....
An authorized representative
of Complainant

Attorneys for Complainant:

HERZFELD & RUBIN,

WALTER HERZFELD,

40 Wall Street,

New York 5, New York.

PILLSBURY, MADISON & SUTRO,

S. J. MADDEN,

225 Bush Street,

San Francisco 4, California.

(App. for Sub. Duces Tecum 1)
65a

Application for Subpoena Duces Tecum

(Filed April 8, 1963)

[1] BEFORE THE
FEDERAL MARITIME COMMISSION
Docket No. 1089

VOLKSWAGENWERK AKTIENGESELLSCHAFT,
Complainant,

v.

MARINE TERMINALS CORPORATION, and MARINE TERMINALS
CORPORATION (OF LOS ANGELES),
Respondents.

To: Benjamin A. Theeman,

Presiding Examiner of the above-entitled proceedings.

Complainant hereby applies for a subpoena duces tecum directing the following persons to produce the following documents at the hearing scheduled in the above proceedings on April 22, 1963, at 10:00 A.M. in Room 11, Federal Office Building, 50 Fulton Street, San Francisco 2, California:

1. Kenneth F. Saysette, Vice President and Treasurer, Pacific Maritime Association, 16 California Street, San Francisco 11, together with all papers, books, documents, records, files and memoranda of Pacific Maritime Association, or of his own, available to him or under his control concerning the method of assessing and collecting funds for the

(App. for Sub. Duces Tecum 1-2)
66a

Application for Subpoena Duces Tecum

so-called "PMA-ILWU Mechanization and Modernization Fund" including, but not limited to:

- (a) A true copy of the agreement between PMA and ILWU creating said Fund;
- (b) All minutes of PMA directors' meetings, general membership meetings and funding committee meetings since January 1, 1961, at which any action or discussion is or was recorded relative to the said Fund and the method of assessing and collecting assessments to said Fund;
- (c) All directives, orders or communications to members relative to the assessment and collection of assessments to said Fund;
- (d) All inter-office memoranda and communications concerning the method of assessing and collecting assessments to said Fund.

2. Peter N. Tiege, Vice President and General Counsel, American President Lines, Ltd., 601 California Street, San Francisco 8, together with all papers, books, documents, records, files and memoranda of Pacific Maritime Association, or of his own available to him or under his control concerning the method of assessing and collecting funds for the so-called "PMA-ILWU Mechanization and Modernization Fund" including, but not limited to:

- (a) All records, minutes of meetings, reports and recommendations of the special Pacific Maritime Association Committee on Work, Improvement Fund Contributions Procedures and of the so-called PMA Funding Committee;
- (b) All inter-committee, inter-office or personal memoranda or communications of the afore-

(App. for Sub. Duces Tecum 2)
67a

Application for Subpoena Duces Tecum

said Committees with respect to the method of assessing and collecting assessments for said Fund.

Said books, papers, documents and records are relevant and material to the issues herein in that they contain information as to the method adopted by PMA and certain of its members for the collection of the so-called PMA Mechanization Fund assessments, and whether such collection method constitutes an agreement, arrangement or understanding as to how members of PMA, including respondents herein, shall charge to or collect from their respective customers, such assessments, and whether the charges made by members of PMA for discharge of unboxed automobiles are discriminatory or prejudicial to the shippers or importers thereof or constitute unjust or unreasonable regulation or practice.

Dated: San Francisco, California,
April 4, 1963.

HERZFIELD & RUBIN,
WALTER HERZFIELD,
40 Wall Street,
New York 5, New York,

PILLSBURY, MADISON & SUTRO,
S. J. MADDEN,
225 Bush Street,
San Francisco 4,

By S. J. MADDEN
S. J. Madden

Attorneys for Complainant.

[“Certificate of Service” omitted]

(Ruling on Application 1)

68a

Ruling on Application for Subpoena Duces Tecum

(Filed April 12, 1963)

FEDERAL MARITIME COMMISSION

WASHINGTON, D. C.

April 12, 1963

[SAME TITLE]

[1] Complainant duly applied for subpoena duces tecum in the above proceeding and respondents have stated they have no objection thereto. A reasonable showing having been made, the application is herewith granted.

BENJAMIN A. THEEMAN,
Presiding Examiner.

Excerpts from Testimony

[36] Kenneth Frederick Sayette was called as a witness by and on behalf of the Complainant and, having been first duly sworn, was examined and testified as follows:

Direct-examination by Mr. Madden:

Q. Will you state your full name for the record, please.

A. Kenneth Frederick Sayette.

Q. What position do you hold? A. Vice-president and treasurer of Pacific Maritime Association.

Q. And how long have you had that position? A. As treasurer, 17 years; vice-president's title [37] about 11.

Q. In your position, do you have custody of records of the company? Are they available to you in the Association? A. I have custody of some, and available to me others.

Q. You received a subpoena to bring with you certain records here which you have worked on with Mr. Torre? A. I did.

* * *

[50] Direct-examination (Resumed) By Mr. Madden:

Q. Mr. Sayette, can you tell us what assessments are made by the PMA under its by-laws, excluding the mech fund assessment? A. The only assessments referred to in the by-laws go to assessments by the Association, which the Association may have to levy for the operation of its own organization.

We have dues and assessments from three or four different sources which are collectable for different purposes of operating the Association. We talk about a seagoing personnel assessment, which is an assessment to operate the Association, a labor function in negotiating contracts with the various seagoing unions.

We have other assessments on the shoreside end of it for dues, which is on a tonnage or a manhour basis, also

Kenneth Frederick Sayette—for Complainant—Direct

used for operating the Association. There is nothing in the by-laws there in any way, shape, or form, which is used or intended to be used for assessments in connection with labor problems.

Q. You mentioned on-shore assessments on a tonnage and manhour basis. Can you explain to whom that assessment applies?

* * *

[51]Examiner Theeman: Off the record.

(Discussion off the record.)

Examiner Theeman: On the record.

Would you repeat the question, please.

The Witness: Assessments or dues, as they are called, are assessable on a tonnage basis against all steamship and stevedoring companies who report tonnage to the Association and pay such tonnage dues to the Association, based on cargoes handled.

There are also manhour dues paid into the Association by the contracting stevedores, a good portion of that money being used to defray the cost of the longshore dispatch hall in the Pacific Coast which, by contract, we share a joint responsibility with the ILWU.

We have also what you might call payroll dues where the companies using our payroll facilities pay into the Association a percentage of the dollar volume of payroll which we handle for them.

By Mr. Madden:

Q. Are there assessments payable by members to create welfare funds, pension funds, or vacation funds? A. No, these are part of collective bargaining agreements between the unions and the PMA.

Q. And to whom are those payments made? A. The payments are made by the individual employers [52] responsi-

Kenneth Frederick Sayette—for Complainant—Direct

ble for making those payments in accordance with the collective bargaining agreement to the Association, which has acted for many, many years as the collection agency for the fund.

The monies, after they are collected monthly, are turned over to the trustees of the various funds.

Q. On what basis are those assessments made? A. They are made on several different bases. They are made on man hours. They are made on man days of employment on the seagoing side. They are made on man hours on the shore side.

Q. Who constitutes the membership of PMA? A. The membership of PMA consists of American and foreign flag steamship companies operating in and out of Pacific Coast ports, between the Canadian and the Mexican border.

The contracting stevedores also are members of PMA at their own option. They can belong or not belong, as the case may be, and various terminal companies on the Pacific Coast belong.

These various organizations belong for the reason that they have a direct interest in any labor negotiations we may have, particularly the foreign lines and the American lines, and the contracting stevedores with the ILWU and the various types of labor we get through our collective bargaining agreement shoreside.

[53] The American flag operators, those that are operating out of the West Coast, are interested in our collective bargaining process with the various unions who are headquartered on the Pacific Coast.

Q. Those are the seamen's unions? A. That is right.

Q. Under the by-laws, will you describe the method of voting rights granted to members? A. Every company belonging to the Association is entitled to one vote by reason of the fact they are a member. All companies supporting and paying tonnage dues into the Association

Kenneth Frederick Saysette—for Complainant—Direct

for the operation of the Association are entitled to one additional vote for every full 100,000 tons of cargo on which such dues are paid.

On the seagoing side, I would have to refresh my memory, but I believe there is one additional vote that is entitled to employers of seagoing personnel for each additional 100 men employed by those companies, a full 100.

Q. Does this apply to both foreign and American flag?
A. The tonnage computation of voting strength applies to foreign lines as well as to American flaglines, and has applied to the contracting stevedores as well. In other words, the contracting stevedores will report and handle cargoes for non-member companies who can't report and pay in directly, but the contracting stevedore does or is [54] obligated under the by-laws to report those tonnages and pay dues into the Association on such non-member companies.

Q. How about the voting for each 100 seagoing men employed? Is that voting right granted foreign steamship companies, too? A. No, because they are not a part of our collective bargaining agreement for seagoing unions on the West Coast.

Q. As between the steamship line companies and the contracting stevedore and terminal companies, who has the majority of the voting power? A. Right as of now, the contracting stevedores I believe have a majority of the voting power.

Q. Would it be possible for you to furnish us perhaps by tomorrow a breakdown of the voting power of the membership?

Mr. Ransom: Mr. Examiner.

Examiner Theeman: Yes.

Mr. Ransom: I should like to have clarified whether he is talking about the shoreside with which

(Tr. 54-55)

73a

Kenneth Frederick Sayette—for Complainant—Direct

this case is concerned, or if he is also talking about off-shore. There may be a difference.

In other words, this case isn't involved in the seamen.

Examiner Theeman: Can you respond to that, Mr. Madden?

Mr. Madden: I, of course, am interested in the [55] shoreside situation, but that leads to another question.

By Mr. Madden:

Q. In considering the contract negotiations with the labor union that led to the ILWU agreement with PMA, did the steamship companies exercise a voting right in their approval or disapproval? A. Very definitely, because they reported a very substantial amount of tonnage, being members of the Association.

Q. Is their voting right reduced by the number of votes they are entitled to per 100 men in this voting, or do they get their full vote? A. The voting strength is predicated on a full vote, as approved by the directors annually.

Q. So far as the adoption of a contract is concerned, the steamship company would, each one would get his full vote? A. That is correct.

Q. Is the same true in the adoption of a method of assessment for mech fund payments? A. That would be true.

Q. Counting those voting on that basis, who would have the majority control for voting? A. The majority control, as I recall it, was still in the hands of the contractor, even though the seagoing personnel votes were included with the American flag operators.

Kenneth Frederick Sayette—for Complainant—Direct

Q. Then may I repeat the request. Is it possible for [56] you to furnish us a list of the voting members and the number of votes by tomorrow? A. (No response.)

Examiner Theeman: Can you answer the question?

The Witness: We could.

By Mr. Madden:

Q. Don't you have a list that is made periodically from time to time? A. No, this voting strength is made up annually.

Q. Well, perhaps, if it would be much simpler for you, why, it wasn't so long ago then that you must have made it up annually, didn't you? A. That is correct.

Q. Perhaps you can furnish a list of what it was at the end of December 1960 and December 1961, and December 1962, if it is made up already. A. It would be available.

Mr. Madden: May we have—

Mr. Ransom: No objection. If he can make it up, why, we will furnish it.

The Witness: It will be determined on how many additional copies he might have of the voting strength for this last year. I would have to check and see.

Examiner Theeman: Do you think you can have those available by tomorrow, Mr. Sayette?

* * *

[58] Q. Do you know whether the majority of the board of directors are from the steamship lines or not, or do you know? A. The majority of the board is from the steamship lines, American flag and foreign.

* * *

Kenneth Frederick Sayette—for Complainant—Direct

[59] Q. Now, I believe you stated that the majority were representatives of the shipping line interests. Has that been true generally over the past several years, say? A. It has been true as long as I have been with the Association, which is 19 years, and particularly true since our 1949 reorganization as a result of the 1948 waterfront strike when the whole Association was overhauled.

Q. That is when the present Pacific Maritime Association was formed to take over from the old Pacific Coast waterfront? A. Well, it was actually a consolidation of several different associations, and the Waterfront Employers' Association of California, the Waterfront Employers' Association of the Pacific Coast, the Waterfront Employers' Association of Oregon on the Columbia River, the Pacific American Shipowners Association.

Q. How was the funding committee chosen to study this mech fund, do you know? A. The funding committee, if I recall correctly, was selected on a recommendation from Mr. St. Sure. I could be wrong, but I don't think so.

Q. It was not elected, it was appointed? A. It was appointed.

Q. By the board of directors? A. Ratified by the board.

[60] Q. On Exhibit No. 5, there is a letter addressed from Mr. Teige to Mr. St. Sure, dated January 4th, in which they set forth the members of the committee:

Peter N. Teige, American President Lines, Ltd.
Foster Weldon, Matson Navigation Company.
Ian Back, Union Steamship Company of New Zealand.
O. I. M. Porton, Holland-America Line.
Hubert Brown, Pacific Far East Line, Inc.
L. R. Richards, Overseas Shipping Company.

Kenneth Frederick Sayette—for Complainant—Direct

All of these members were associated with the steamship lines, were they not? A. That is correct.

Q. I believe by Exhibit 6, dated January 11, 1961, addressed from the Pacific Maritime Association, to members, that at a membership meeting on Tuesday, January 10, a vote was taken on the method to be used for contributions to the ILWU-PMA modernization and improvement fund.

It calls for a tonnage formula with bulk cargoes at one-fifth the general cargo rate to be adopted with the understanding that the method of collection will receive continued study and be presented to the membership again in six months.

Was that the formal adoption of the basic method of assessment for the fund by the membership? A. No, this was an adoption of a method of assessing [61] without specifically spelling out the rates. The rates were subsequently developed by a committee and, as I recall, taken up by the board of directors around the middle of January.

Q. It was a little bit later than this January 5th date. Did the membership act upon the recommendation of the funding committee again after January 5, 1961? A. This action taken by the membership was with the understanding that the rate would be set by the directors after the funding committee, as I recall it, had come up with some studies and conclusions as to what the rate should be.

* * *

[63] Q. Referring to Exhibit 35, it is provided in paragraph 7 the declaration of tonnage shall be made by member steamship companies and reporting stevedores reporting for non-member companies and for government agencies.

Is that still the method by which reports come to the mechanization and modernization fund? That is, do the

Kenneth Frederick Sayette—for Complainant—Direct

steamship companies report as well as the contracting stevedores? A. Steamship companies report all tonnages. The contracting stevedores, the contracting stevedores make the payments on the mechanization contribution.

Q. When it is a member steamship company and they make it on the basis of a report made by the steamship company? A. Furnished to the contractor.

Q. The steamship company furnishes it to the contractor, does it? A. The figures, yes.

Q. Was that the case from the beginning, or did originally the steamship company— [64] A. It originally started for a two-week period, as evidenced in the file someplace, that the steamship company started making the payment directly.

On advice of counsel, we changed making the payment on account of some internal revenue regulations which says that any benefit along this type of plan, the contribution had to be made by the employer, and not by a second party.

Q. Now, under the plan as adopted, general cargo was to be assessed at 27½ cents per ton, as manifested with 2,000 pounds weight, 40-cubic foot measurement, and 1,000 board feet of lumber, constituting a ton, but then it is provided that the contribution rate on bulk cargo will be 5½ cents per ton.

* * *

Q. Do you know why bulk cargo was assessed at only one-fifth of the rate of general cargo? A. On the basis that generally on bulk cargo there is not nearly the manpower content needed to handle that cargo as compared with cargoes of higher density, such as general cargo.

Q. So the amount of manpower needed to handle bulk cargo was a consideration given in determining the assessment rate? [65] A. On the basis that many more tons could be handled.

Q. Now, has there been any change in any of the methods of assessment under the mech fund plan since its original inception, other than some modifications in rates? A. (No response.)

Kenneth Frederick Sayette—for Complainant—Direct

Q. Has there been any change in any assessment to any particular cargo? A. The only change I can think of, and I can't exactly pinpoint it from memory, as to whether it took place the day we adopted the rate or at our membership meeting before the directors set rates, but formerly under our old reporting procedure scrap iron, for instance, took the general cargo rate and would have taken the full 27½ cents a ton.

The change was made because of the fact that the cargo handling techniques in handling scrap metal had been improved substantially over the last several years before the mechanization plan went into effect, and it was a lot faster handling cargo than it formally had been; and consequently it should be considered in the bulk category class.

Q. This change was adopted at the outset of the plan, or did you say you weren't sure whether it was? A. I think it was adopted at the membership meeting before the directors set a rate for the cargoes.

Q. Now, what about shipments of lumber in the coastwise trade? Was there ever a change made in the method of [66] assessing lumber in the coastwise trade? A. There was not too long ago retroactive to January 16, 1961, on the same basis, namely, that—

Mr. Ransom: Excuse me, may I ask that the Examiner ask the witness simply to answer the question. He has not been asked the reason. He has merely been asked if there were any change.

The Witness: Thank you, well taken.

The answer is yes.

By Mr. Madden:

Q. And what was that change? A. It was changed from 24½ cents per thousand to, as I recall, five cents per thousand.

Kenneth Frederick Sayette—for Complainant—Direct

Q. Do you know what the basis of that change was, or the basis for making the change? A. Packaged lumber.

Q. You mean previously—

Examiner Theeman: Let the witness explain, Mr. Madden.

The Witness: Previously lumber was loaded board by board. In later years, it is now packaged, and lent itself to simplification of handling.

By Mr. Madden:

Q. Again, then, there was not the necessity for as much labor? [67] A. That is correct.

Q. To go into the handling of lumber? A. That is correct.

Q. In determining the assessment on the basis of tonnage, who decides whether particular cargo is manifested by weight or measurement in a situation where there is no uniform practice? A. (No response.)

Q. Do you know? A. No, this was discussed in committee, but I don't know.

Q. Referring to Exhibits 34 and 35, announcing the mech fund assessment, were there protests immediately to the method of assessment from the Complainant's representative to PMA? A. Yes.

Q. That would be Exhibit 7, a letter from Winchester Agencies to PMA, would it, being the first protest, at least? A. That is one.

Q. Were there protests from any other sources with respect to the assessment on vehicles, by—besides Volkswagen?

Mr. Ransom: What was the word—excuse me—assessment on what?

Mr. Madden: Vehicles.

Kenneth Frederick Sayette—for Complainant—Direct

[68] The Witness: I can't recall of another off-hand.

By Mr. Madden:

Q. Did any of the direct employers protest; that is, the contracting stevedores? A. My recollection is that several did.

* * *

[69] Q. Do you recall writing to the members of the Association in January of 1958, stating that a number of steamship companies and contracting stevedores had been reporting automobiles on a weight basis and asking them to correct that situation and report on a measurement basis? [70] A. Yes, I remember that letter.

Q. And it would appear that, at that time at least, some of the members were reporting on a weight basis instead of a measurement basis? A. They were, and we found out, and we asked them to remit retroactively.

* * *

[71] *By Mr. Madden:*

Q. How is the cargo in a container assessed under the mech fund? A. My recollection is that the containerized cargo is assessed on 85 per cent of the cubic contents.

Q. That is on a measurement basis? A. On a measurement basis, as far as I know.

Q. I do not seem to have a copy of this letter, but this is a typed copy of the letter, presumably headed with the Pacific Maritime Association letterhead, with a date of February 3, 1961, addressed to members, and purports to have been sent by you, Mr. Sayette.

It has to do with cargo dues, tonnage, automobiles. Do you recall sending a communication of that nature to members? A. I would like to see a copy of the original letter, if I could. It sounds familiar.

(Tr. 71-72)

81a

Kenneth Frederick Saysette—for Complainant—Direct

Examiner Theeman: Off the record.

(Discussion off the record.)

Examiner Theeman: On the record, please.

Mr. Madden: This letter of February 3rd is addressed to members entitled, "Cargo Dues, Tonnage, Automobiles," and it refers to your earlier letter of January 16th that we mentioned a moment ago, in which you stated that automobiles should be reported to the Association on a [72] measurement basis, to tonnage dues purposes.

We indicated that if a steamship company or contracting stevedore was reporting automobiles or any other cargo using weight, when measurement should have been used, a supplementary tonnage report should be submitted promptly to the association adjusting such errors, together with a check to cover the additional amount of dues involved.

Since the institution of the modernization and improvement fund, it has come to our attention a number of contracting stevedores and steamship companies are still reporting automobiles for tonnage dues purposes on a weight basis instead of measurement.

The theory of dues and assessments is predicated on the fact member companies shall pay on exactly the same basis, thereby assuring all companies each is paying a share of dues for assessment programs.

Any steamship company or contracting stevedore who has not been reporting and paying dues on automobiles on a measurement basis since January 1958 should immediately complete a revised tonnage declaration form indicating by vessel and date the tonnage on automobiles reported on a weight basis, the tonnage which should have been reported on a measurement basis, and the difference which is as-

Kenneth Frederick Sayette—for Complainant—Direct

sessable at 2½ cents per ton, and it goes on about the check and [73] future reports.

Now, do you recall that there was some such letter?

The Witness: That is right.

By Mr. Madden:

Q. And on whose authority did you write this letter?

A. The authority was based on the letter that I sent out in 1958 calling their attention to the fact that it should have been paid on measurement, and was not.

Q. And this again was called to your attention when you were getting the first report in on the mechanization fund assessment? A. Right.

Mr. Ransom: Mr. Examiner, we find that it is in Mr. Teige's file, which they asked for, and which will be produced, so we have no objection if you wish to put that in, or whatever you want to do with it, but it was something that happened to be in another file.

They haven't yet asked for it.

Examiner Theeman: Very good.

Mr. Ransom: So I just wanted to clear the record on that.

Mr. Madden: Again I will have to have some copies made.

Examiner Theeman: Without objection—

Mr. Zimmerman: No objection.

* * *

[75] Q. Is the fund at the present time currently keeping up with its requirements? A. We have done very well. We made our \$5 million dollars in the last two years, excluding non-contributors.

Kenneth Frederick Saysette—for Complainant—Cross

Q. When you say excluding non-contributors, do you have sufficient funds, despite their non-contributions? A. No.

Q. Or do you need the contribution? A. No, we need that contribution, to make our commitment.

Q. Would you need the full amount? A. We would.

Q. If all autos were assessed on a weight basis and paid, would the fund be current or not? A. I would say not.

Q. So that if auto assessments were lowered, it would be necessary to raise the assessment on other cargo to meet your funding requirements? A. That is correct.

* * *

[81] *Cross-examination by Mr. Ransom:*

* * *

Q. Mr. Saysette, in connection with Exhibit 6, which I will show you, that exhibit is a report on the membership [82] meeting. You were asked whether the membership at that time approved the assessment that had been introduced or suggested by the committee, and your response was that the amount, the rate hadn't then been determined.

What I wish to ask you is whether, regardless of the computation of the rate, the membership did not at the meeting of January 10th adopt or vote in or improve the method of assessment. A. They improved the method of assessment.

Q. And the rate was merely a matter of computation? A. That is correct.

* * *

Q. In connection with Exhibit 36, which is the letter to members of February 3, 1961, regarding tonnage assessments on membership dues, and a letter in 1958 in which you stated, "This letter of February 3rd is based upon," will you state whether the situation therein described, where it had come to the attention that there were some reporting of

Kenneth Frederick Sayette—for Complainant—Redirect

automobiles for the dues purposes on a weight basis, was usual or unusual, at this time? A. In 1958?

[83] Q. First in 1958? A. Reporting on weight basis was unusual.

Q. What was the purpose, then, of sending the letter out? What was the object of it?

Examiner Theeman: Which letter are you referring to now, Mr. Ransom?

By Mr. Ransom:

Q. Well, let's refer to the 1958 letter. A. The purpose was to bring into line, if you wish to call it that, some companies who had been reporting automobiles on a weight basis rather than on a measurement basis.

Q. Now, referring to the Exhibit 36, the letter of February 3, 1961, was there any particular automobile that had precipitated that? A. My recollection was it was the Volkswagen shipload shipments that precipitated this particular problem.

Q. If I understand you, there had been a reporting since you had discovered a Volkswagen on a weight basis rather than a measurement basis? A. That is right.

Q. And you wrote the letter to the membership generally? A. That is right.

Mr. Ransom: That is all.

[84] Redirect-examination by Mr. Madden:

Q. Do you recall what company it was that was reporting on a weight basis? A. My recollection the companies were reporting on a weight basis from Marine Terminals, California Stevedore & Ballast Company, and I believe Asso-

Kenneth Frederick Sayette—for Complainant—Redirect

ciated Banning down south, Brady-Hamilton in Portland, and I believe Seattle Stevedoring Company in Seattle.

Q. Would your office still have those reports? A. Prior to the mechanization fund, there was no break-out to delineate or define what was automobiles and what were not. We just happened to hear about the fact that automobiles were being reported on a weight basis instead of on a measurement basis.

Q. On February 3rd, when this letter went out, had you received any reports on the mech fund yet? A. Yes, it is possible, but we would have received very few.

Q. Are those reports still in your office? A. Not on the new forms where it can be spelled out.

Q. Then your reports won't show where these contracting stevedores you named reported on a weight basis, or on a measurement basis? A. We don't have the manifest.

[85] Q. If I understand you correctly, then, it was just on the basis of your recollection that it was these particular stevedores that were reporting on a weight basis, the ones that you named? A. We traced it through the office by checking up on a ship and asking the contractor how he reported. He said on weight.

That is wrong, and then from that, why, we pinpointed some other contractors on the Coast who were doing the same thing.

Q. And when was this? A. This was very shortly after the mechanization plan started.

Q. Did any of them claim that they were reporting on other bases, or on the basis of how the vehicles were manifested? A. They did state that they were reimbursed, or they paid the contractor on a unit basis.

Q. And you say you pinpointed the various ones who had been reporting on a weight basis. How did you find out to go back to them and have them correct their assessment if you didn't have any records? A. We assumed that

Kenneth Frederick Sayette—for Complainant—Redirect

all companies are honest in their declaration, and if they report so many weight tons and so many measurement tons we take their word for it. We have [86] now instituted a program whereby, as a result, primarily, of this automobile problem having Price-Waterhouse go out and audit 15 companies a year now on a sampling basis to make sure the companies are reporting the way they should.

Q. Did the PMA assess any of these contracting stevedores for past deficient dues? A. No, the letter said, "Please make up the new expense; advise and correct your errors."

And many of them did come through and correct their errors.

Q. They did? A. Yes.

Q. Do you have any record of that? A. I suppose we could dig them out if we had to, but it would be pretty rough going. We have had a lot of paper going through down there.

Q. Perhaps tomorrow you could ask Mr. Lancaster if he could spot where those records might be.

Mr. Ransom: Mr. Examiner, I think we have been awfully cooperative, but I think he is now asking for quite a job, going back three years on membership dues. I think it would be quite a project.

Mr. Madden: We will discontinue further questioning on that.

Examiner Theeman: Are you also withdrawing your [87] demand?

Mr. Madden: Yes, we withdraw our request for a search of the records for this purpose.

Mr. Ransom: Thank you.

Mr. Madden: That is all.

Mr. Ransom: May I ask one question.

Peter N. Teige—for Complainant—Direct

Recross-examination by Mr. Ransom:

Q. The list of stevedore contractors that you recited in answer to Mr. Madden, would you know whether each of those during this period of time were handling Volkswagens or not? A. I am pretty sure they were.

* * *

[88] PETER N. TEIGE was called as a witness by and on behalf of the Complainant and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Madden:

Q. Will you state your full name. A. Peter N. Teige.

Q. And what is your position? A. I am vice-president and general counsel of American President Lines, Ltd., San Francisco.

Q. On what date were you appointed as a member of the so-called funding committee for the PMA mechanization problems? A. I don't remember the exact date, but it was [89] sometime, as I recall it, in November, early November of 1961.

Q. 1960? A. 1960.

Q. Was that when the Committee was formed, or had it existed prior? A. No, that was when it was formed.

Q. And how were you appointed? A. My recollection of that is that we were informed of our appointment by the staff of Pacific Maritime Association, and it is my further recollection that the committee at that time—that is, at what I would refer to as the first Committee—was appointed by the Coast Steering Committee of the Pacific Maritime Association, which is a group of executives of the member companies of PMA who had responsibility for the administration policy of the ILWU coastwide Longshore Agreement. That is the overall basic Longshore Agreement.

Peter N. Teige—for Complainant—Direct

Q. And who were the members of the Committee? A. There were six members of the Committee, Mr. Hubert Brown of Pacific Far East Lines, Mr. Foster Weldon of Matson Navigation Company, Mr. Otto Porton of the Holland-American Line, Mr. Ian Back of Union Steamship Company of New Zealand, and Mr. Lloyd Richards of Overseas Shipping Company.

Q. Were any of these members associated with a terminal or a stevedoring member of the Association? [90] A. Yes, Mr. Weldon's organization, Matson Navigation Company, has a wholly-owned subsidiary, as I understand the arrangement, Matson Terminals, Inc., which is I believe both a stevedore and a terminal operator. It is also my understanding that Overseas Shipping acts as a terminal operator. Of that I am not positive.

Q. What was the name of the man from Matson? A. Foster Weldon.

Q. Did Mr. Weldon, when you were on the committee, indicate that he was familiar with the operation and costs which a terminal and stevedore pays? A. (No response.)

Q. Do you know whether he had any experience in that himself? A. Well, Mr. Weldon was the director of Matson's Research Department, and he is a very able man in the department; I understand their work has gone into most every function of the Matson Company. He was not, however, from their Operating Department, and my guess is that he would have a general understanding of their terminal and steamship operation, but might not know specifics as in the case of a man actually working from day to day in that end of the business.

Q. Now, you have brought various records here with you. Is there a convenient way to describe what these are? [91] A. Well, I have a few notes here. These are copies in chronological order of the papers furnished to you by the Pacific Maritime Association, pursuant to your subpoena, less a group of papers consisting of minutes of

(Tr. 91-92, 94)

89a

Peter N. Teige—for Complainant—Direct

the Board of directors of PMA, and the members, and possibly a few other papers.

Mr. Madden: Off the record?

Examiner Theeman: Off the record.

(Discussion off the record.)

Examiner Theeman: On the record, please.

Let us adjourn until 10:00 a.m. tomorrow morning. All witnesses appearing will please appear at that time.

(Whereupon, at 4:30 o'clock p.m., the hearing in the above-entitled matter was adjourned, to reconvene at 10:00 o'clock a.m., Tuesday, April 23, 1963.)

[92] BEFORE THE FEDERAL MARITIME COMMISSION

Room 11
Federal Office Building
50 Fulton Street
San Francisco 2, California
Tuesday, April 23, 1963

The hearing was reconvened at 10:00 a.m., pursuant to adjournment, Benjamin A. Theeman, Examiner, presiding.

Appearances:

(As heretofore noted.)

* * *

[94] PROCEEDINGS

Examiner Theeman: On the record. The hearing will be in order.

Prior to the opening of the hearing today, Mr. Ransom supplied the attorneys of record and the

Peter N. Teige—for Complainant—Direct

Presiding Examiner with copies of the voting strength of the Pacific Maritime Association, as he indicated he would do in yesterday's record.

Without objection, each one of the documents is admitted in evidence. That dated February 9, 1960, as Exhibit 39, that dated March 6, 1961, as Exhibit 40, and that dated March 13, 1962 as Exhibit 41.

(The documents referred to were marked Exhibits 39, 40 and 41, and were received in evidence.)

Examiner Theeman: Mr. Teige has resumed the stand.

Whereupon, PETER N. TIEGE, heretofore called as a witness by and on behalf of the Complainant, being been previously duly sworn, resumed the stand and testified further as follows:

Direct examination by Mr. Madden (Resumed):

Q. Mr. Teige, you stated that the original Committee consisted of six members, whom you named, and I think you [95] designated as the original Committee. Have there been changes in the membership of that Committee? A. In January of 1961, after the initial decision had been taken by the Association with respect to the method of assessment, the Board of Directors asked that a new committee be formed to give further study to the question of the proper method of assessment, and at that time Mr. St. Sure appointed a new committee that consisted of the same six members of the first committee, with myself as chairman, and he added three additional members, Mr. Adams of Pope & Talbot Line, Mr. Rochen of States Steamship Company, and Mr. Littlejohn of Grace Line.

Mr. Littlejohn requested that he not be asked to serve as his duty, he felt, didn't permit sufficient time for the job, and so he did not serve and was not replaced.

Peter N. Teige—for Complainant—Direct

That committee, as I recall it, again meeting in late January or early February of 1961—

Q. Is that committee still in existence? A. Yes, it is.

Q. With those same members? A. Yes, although I saw in the paper the other day that Pope & Talbot had gone out of the steamship business, and it may be that we have lost a member by that occurrence, but I am not sure of that. They may still have other activities that would warrant their being members of the Pacific [96] Maritime Association.

Q. Mr. Ransom in explaining the total amount of the fund yesterday said that there was a million and a half dollars collected prior to January 1st, approximately, that was to be turned over to the fund. Do you know on what basis that money was collected? A. I would believe it would be better to ask other witnesses about that, because that was prior to my dealing with this. It is my understanding, however, which you can verify with other witnesses, it was on a manhour basis.

Mr. Ransom: We will stipulate that it was on a manhour basis.

Mr. Madden: That will save some time.

Mr. Ransom: We intend to have Mr. St. Sure here to explain all these things.

By Mr. Madden:

Q. Now, going back to your Committee when it was first formed, I take it you met several times and discussed various ways, problems, and so forth, on how to arrive at a method of assessment in order to raise the required funds. A. That is correct. The committee had, as I recall it, five meetings prior to making its recommendation of January 4, 1961, which was the basis of the action of the membership on January 10, 1961.

Peter N. Teige—for Complainant—Direct

Q. During those periods of time did you obtain [97] information or opinions from the outside, or was it pretty much up to the committee to dig up their own information to determine what their recommendations would be? A. The committee had quite a variety of experience in its members. There was a labor relations man, there was a research man, there were several who were traffic men in small organizations where they really get into all facets of the steamship business, including the cost of loading and discharging, method of loading and discharging, and so forth, but then, in addition, these people come from organizations who have men skilled in all phases of the steamship business, and I know in my particular case I spent considerable time with our operating people during this period, and subsequently, too, discussing the various problems that arose in trying to work out a system for the raising of this money.

Q. In your report of January 4th, which has been introduced here as Exhibit 5-A and 5-B, and there was a majority report and a minority report, was there not? A. Yes, there was.

Q. And in the majority report, there was recited various alternatives that weren't considered by the committee. The first, as I understand it, was—well, no. Let me put it this way.

Basically—if I give the report incorrectly, please feel free to correct me, but basically, as I read the [98] report, the committee considered three contentions primarily. Considerations based on manhours, considerations on manifested cargo tonnage, and a combination of manhours and manifested tonnage, and then in addition the report mentioned at least two other suggested plans that, I take it, were not as seriously considered as the first three.

Is that a fair statement? A. Yes, I think that is a fair statement. The other two you refer to were probably given more consideration than the report indicated. These two

Peter N. Teige—for Complainant—Direct

were a system that would measure improvements of each, probably operator or some other entity, improvements in productivity that could be traced to this agreement, and charging on the basis of those improvements.

And the other was a proposal that would charge the fund primarily to container operations, as had been done on the East Coast by the ILA, International Longshoremen's Association, in their collective bargaining agreement with the East Coast operators.

Q. Would you briefly tell the Examiner why the committee didn't think either of those were feasible, or if not feasible, practical? A. I am not sure I can do it briefly. In the collective bargaining that has gone on for a number of years, actually, about this subject of work improvement and [99] mechanization, the discussions had dealt to some extent with a question that later the fund committee had to deal with, namely, who should pay what, and the union had been strongly attracted to the idea of measuring the man-hour savings that would come from the agreement they would make about mechanization work improvement and their taking some share of that saving.

At first it wasn't to be a share, but I believe that was the bargaining employed.

My understanding was that at one stage they were talking about taking it all, but realistically they were talking about sharing the savings.

The industry took some steps to look into that possibility, and a gentleman from the Bureau of Labor Statistics, a Mr. Max Kossoris, was engaged to explore the possibility of measuring productivity improvement.

Subsequently, the industry had meetings about this basic question and decided that it was inappropriate to have this kind of system based on a sharing of savings, and felt that instead the only payments that should be made by the industry should be for the harm that came to the labor force

Peter N. Teige—for Complainant—Direct

in the way of lost work opportunities from the mechanization and work improvement program.

That decision led to breaking away from the sharing of savings idea in the collective bargaining, and when we [100] considered that system we were strongly influenced by this past history and concern was expressed, particularly by the people close to collective bargaining itself, that it would be unwise for the Association to set up a system that was exactly the system the union had asked for, the fear being that it would be a very simple thing to take that over in the next session of collective bargaining which would come up in five years from the date of this agreement.

Any system that we devised, of course, ran that risk, but the feeling was, as to this one, that it was the very system the union had been strong for, and that we shouldn't play into their hands.

There were other objections to the productivity approach, however. These objections were primarily based on the enormous complexity of such a system. You have a large industry all up and down the Pacific Coast, with a myriad of types and arrangements of activities, and to measure the savings in manhours to all of the elements in that complex system and trace those savings to this agreement was felt to be unworkable or at least extremely difficult to accomplish.

Savings could come from many sources, better supervision, a new, more efficient stevedore, a new terminal, different year on the vessel, changes in commodity mixes that would affect manhour usage, and so on, so that the [101] result would be a very complex system.

So those were the two reasons primarily why we did not pursue that any further. The container suggestion—that is, having some sort of assessment that would throw the entire cost of the fund to containerships or operators using containers—was felt to be patently unfair because there were

Peter N. Teige—for Complainant—Direct

many, many other activities in the loading and discharging and terminal processes that were going to have an opportunity at least of being improved under this agreement in addition to this most obvious one of the use of containers.

Q. Then I take it that your committee, in considering these various alternatives, was taking into consideration the fairness of the method adopted and how it would fall upon the members of the Association, and presumably ultimately their customers; would it be fair to say that your committee was considering all those items? A. The committee considered in a general way the question of fairness, but you will have to recognize that it was dealing with literally thousands of possible situations involving stevedores, terminal operators, carriers, shippers, consignees, and involving I suppose literally thousands of commodities, and all of these in various relationships.

So it was not possible, and certainly was not done at the time of the January 4th recommendation that we [102] examine every situation, and the impact of this assessment on all of those situations, but we did give—obviously we were hopeful that we could come up with a system that would not be excessively burdensome to anyone—we had other things, however, to consider, and those were collective bargaining considerations.

I have just mentioned a very serious consideration in connection with the measurement of productivity. We had the problem of working out a system that would be simple in its administration. We have a small organization, a small staff, and we are collecting in one sense a small amount of money.

Q. Now, I take it that we don't have to comment too much on the reasons for rejecting the manhour basis as they appear clearly in your report. That was that you felt that the group that was able to mechanize the most and reduce its labor costs the most, increased the unemployment the

Peter N. Teige—for Complainant—Direct

most, would contribute less. A. Yes, I think that is a good statement of it.

Q. Again, though, that would indicate that your committee was thinking, would it not, of the impact of the method of assessment on the particular members who collected it and were faced with the problem of obtaining the money with which to obtain it. A. Yes, Mr. Madden. We were not unaware of the impact [103] of this on the various elements of the industry. However, I should point out that the impact wasn't just a cost. Our problem was much more complicated than that in that the impact of the agreement for which the fund was payment was that it gave an opportunity for savings, and so in considering the total impact of the agreement, and the funds that bought the agreement, you had to take into account in a general way not only cost but opportunities for savings.

So you put those two together in this complex situation, and the close weighing of equities became a real burden to the committee.

Q. The fourth method that was mentioned in the report which was recommended by a minority of the two was a combination tonnage-manhour assessment, and I gather from the report that that is somewhat similar to the way a current assessment for PMA dues is paid.

Am I right or wrong in that? They talk about the 60-40. A. Yes. Yes, there is a distribution of the PMA dues between the funds raised on a revenue tonnage basis and funds raised on a manhour basis. My recollection is that it is 60 per cent manhours and 40 per cent tonnage, but I am not sure of those figures.

Q. I was not clear from reading the report what the reasons were that the majority chose the straight tonnage [104] basis over the combination other than the matter of convenience. I assume there was something more than that, was there not? A. Yes, sir, there was. I think some of the

Peter N. Teige—for Complainant—Direct

majority felt that the inclusion of a manhour measurement, even if only a partial measurement, was as to that part unfair for the same reason that the total manhour method of assessment was unfair, namely, that the operator who chucked off manhours as he improved his operation would be paying less and less to the fund, in this case, as to that portion measured by manhours.

Then I think there was a complication, but that—

Q. Then I think there is an arrangement for paying into the mech fund, was there not, for checkers, and— A. Yes, there is. In late 1961, a change in assessment was made that was recommended by the committee which I chaired, and was approved by the board of directors. There had been concern that some of the employers of clerks performing the receiving and delivering process of terminal operations were not paying anything into the fund on behalf of those clerk employees.

Q. And may I interject there, are those clerk employees covered by the ILWU contract? A. Yes. In other words, these efficiencies can be carried out with respect to those terminal activities, as well [105] the longshore activities. In any event, in an effort to correct this problem, it was recognized that some assessment with respect to clerk labor would be made. The committee explored the possibility of doing that on a tonnage basis, too.

Q. That would be increasing the rate slightly? A. No, it would be applying a tonnage charge to terminal operators for every ton handled over a terminal and then, of course, that would reduce the amount that would have to be paid with respect to every ton loaded in and out of a ship, because usually those are the same tons in 99 per cent of the cases.

That idea of charging for clerks on a tonnage basis was dropped when the staff of PMA reported to us that it was or would be exceedingly difficult to get a reporting system

Peter N. Teige—for Complainant—Direct

that would accurately state the number of tons that a terminal operator was handling.

And as a result of that administrative problem, it was decided to collect the assessment on clerks on a manhour basis, and the result of that were the following changes in assessment:

The number of registered longshoremen and the number of clerks were compared, and the breakdown, as I recall, came out to 88 per cent longshoremen who were registered and in the industry, and 12 per cent clerks. We then [106] said that 12 per cent of the \$5 million per year would be raised by the assessment on clerks, and that fund of money, 12 per cent of \$5 million, would be raised on a manhour assessment.

In other words, the number of cents per manhour that would raise that portion of the \$5 million, so that was computed on tonnage and manhour figures that we had, and it came out to a new rate of 24½ cents per revenue ton on general cargo.

It had formerly been 27½ cents, and the new assessment of 15 cents per manhour on clerks.

Q. That assessment was only on the hours, the manhours of the clerks themselves, and not the entire work force? A. Just the clerks and checkers, using that term in a general sense, but it is the men in the union who are not handling cargo but are receiving and delivering cargo.

Q. Now, you mentioned something earlier that I would like to emphasize a bit. The ILWU contract covers workers both on the ship and on the dock, does it not? A. Yes. By workers on the ship, I assume you mean longshoremen.

Q. Longshoremen? A. Yes.

Q. And longshoremen on the dock who are handling cargo, as you say, and usually it is the same cargo, so that in [107] determining your measure of assessment you have chosen the contracting stevedore as the person to measure the cargo that came out of the ship, assuming that 99

Peter N. Teige—for Complainant—Direct

per cent of it practically is also the cargo that goes across the dock. Is that correct? A. Yes, I think that is right.

Q. But all those employees then, of course, are entitled to the benefits of this mech fund as set up. It is not just the stevedores on the ship that are entitled to it. A. No, it is my understanding that the benefits are available to clerks and checkers, as well as the longshoremen, in the loading and discharging gang, and to the longshoremen who do dock work such as palletization of cargo, restacking of cargo, sorting, and so forth.

Q. Now we come to the final method that was adopted—I mean was recommended by your committee, and subsequently was adopted by the PMA which, in a word, would be on a tonnage basis, weight or measurement, as manifested. Is that correct? A. Well, that isn't quite correct. The recommendation of the committee and the action of the membership was on a revenue ton basis in a manner in which collections were made on a tonnage basis for dues, and there had been over a period of time in the collection of the portion of dues, based on revenue tons, a clearing up of certain uncertainties about [108] per ton types of cargo.

For example, lumber was on a thousand board feet. They had uniformly established 40 cubic feet as a measurement ton, whereas in some trades it is not 40 cubic feet. It may be a cubic meter, and so on.

Q. When you say "they," are you talking about the PMA? A. The PMA—I don't know who did it through the years, whether it was the staff with the Board's approval. I assume that would be the case, but in any event there was a system in being, and our recommendation was that that system be expanded to cover these assessments or these charges.

Q. You referred to revenue tons. I take it that revenue tons means the tons on which the steamship companies base their rates, determining how much they should get

Peter N. Teige—for Complainant—Direct

for carrying the cargo. A. Well, the expression "revenue tons" means that the tonnage, whether weight or measurement, on which the steamship carrier bases his charge to the shipper. As I just indicated, under this system there were some variations that had been established through the years as to the meaning of a revenue ton for the purposes of collecting dues from the PMA membership, and now collecting this assessment.

Q. In other words, it wasn't necessarily the revenue [109] tons of a steamship company method of manifesting, but the revenue tons as had been built up over a period of years in the PMA— A. Yes.

Q. —that you were talking about? A. Yes.

Q. And you don't have any idea how that came about, except by decisions from time to time, for the purposes of reporting dues? A. I really don't know how that was done.

Q. Did the committee give any consideration to how certain cargo might have been reported, whether by weight or measurement, in various trades? A. Well, the committee understood, I believe, that there were different types of revenue tons in various trades. They understood that that was the case.

Q. Actually, isn't it true that the revenue tons by which a steamship company might determine its rates has very little relationship to the cost of loading or discharging? A. Well, I wouldn't say it has little relationship. It has some relationship to the cost of loading and discharging in that it is a measurement of volume which would suggest that there is something there for somebody to do something about when you load and discharge a ship and, therefore, [110] would lead to an expenditure of man hours in the development of costs.

Q. But in the basic element of containerization, isn't it the fact that the loading and discharging is greatly simplified by the fact that one unit is removed of considerable size or volume as compared to many small items, so that

Peter N. Teige—for Complainant—Direct

the size of the particular cargo, so far as loading and discharging is concerned, is not necessarily relevant as it would be to a steamship company which is concerned with space, as well as weight, in its carrying capacity? A. Well, all I can say is what I have said before, that it would be my view that it has some bearing on stevedore activities.

Q. Well, primarily, I gather you are interested in the fact that PMA already had some system of collective bargaining on a weight or measurement basis for their cargo dues when you adopted the same method for the mechanization fund dues.

The Witness: Would you read that question?
I missed the beginning of it.

(Record read.)

The Witness: Well, if your question means were we primarily motivated by that fact in choosing this method—

Mr. Madden: Yes.

The Witness: —I would say no, but it was an [111] element and one of the principal jobs that the committee had, it felt, as to the determination of this assessment, was to come up with something that was administratively simple, and easy to operate.

Now, that was not a primary consideration, but it was one of the considerations that this method had the attraction of there being that system in being. That was one of the primary motivations.

By Mr. Madden:

Q. Did you not consider the effect of this method of assessment in any detail as to how it might fall on any particular cargoes? A. I think during the discussion in those meetings from time to time, cargoes may have been

Peter N. Teige—for Complainant—Direct

discussed or more likely to be situations being discussed, and given the tremendous number of activities that were affected by this, there weren't very many specific ones.

What we had to do at the outset was come up with a broad general plan, and it was my expectation at least that if, out of this myriad of activity, the transactions that go on in a stevedoring and terminal industry on a whole coast of a country, if in there, in that mass of activity there was something seriously harmed by this assessment, that that would come out, and then we would have to deal with those on their merits, and that is what happened.

[112] Q. There was, was there not, some representation or protest before at least your report was final, by certain scrap metal handlers? A. I don't recall that those interests came to the committee with that problem. They may not have even known who existed—I don't know, but they did make themselves heard to the Association, and that was one instance when the PMA tonnage formula that had been used for the collection of dues was changed.

The scrap had been traditionally for years, apparently, on a general cargo basis, and these people pointed out that, in effect, scrap now was being handled like bulk. It wasn't being carried aboard in swings, but it was being poured in many instances, and in any event was handled very much like a bulk commodity, and my recollection is that the board of directors, as I recall it, without any recommendation from the funding committee, made that change in the tonnage formula at the outset, or very near the outset of the application of the new formula.

Q. Were automobiles discussed at all in any of your meetings prior to your recommendation? A. I don't recall that they were at all. No, I would say they were not, by the first sessions, I mean the sessions that took place prior to the January 4th recommendation.

Q. If a particular commodity, say, in the westbound [113] trade, was manifested on a weight basis and in the

Peter N. Teige—for Complainant—Direct

European trade would be manifested on a measurement basis, would you have any opinion as to how it should be reported to PMA? A. I don't think that happens very often. I think usually things are one or the other, but accepting your hypothetical question, it is my understanding that under the PMA tonnage formula it would be as manifested.

In other words, in one case it would be weight, and another measurement. Now, it is also my understanding that that virtually never happens, but I may be in error about that.

Q. Isn't it true that sometimes freight is manifested by weight even though the measurement—that is, the volume—is greater? A. I don't know the answer. That would surprise me, but there are many surprises in the steamship industry.

Q. If this were the case, if there were such cargoes, this obviously would, would it not, affect the assessment that that cargo paid, or I shouldn't say the cargo paid, that would affect the assessment which the discharging stevedore would have to pay on such cargo—that is, he would be paying the assessment on a measurement, on a freight paid basis, although in fact its volume was greater than its weight?

Mr. Ransom: I am sorry, you lost me. I don't know whether you lost the witness or not. Could we have the [114] whole series—

Mr. Madden: Well, perhaps we will start over.

Examiner Theeman: Rephrase that question.

By Mr. Madden:

Q. If there is cargo manifested on a weight basis, although the measurement is greater, would not the stevedore in paying the mech fund assessment be paying on a weight basis rather than a measurement basis? A. Yes,

Peter N. Teige—for Complainant—Direct

he would be if, under the PMA tonnage dues procedures, this was the method on which that is collected. I have to say it that way, because there are exceptions that have been established.

Q. I take it your duty in the steamship company does make you familiar with any particular rate as applied to commodities, do they? A. I would say in general, no.

Q. Do you know whether the contents of a container are manifested on a weight basis or on the measurement of the container? A. Well, I know that in the case of American President Lines, which is a typical foreign trade carrier, that its charges for cargo in containers are with respect to the cargo, not a charge based on a per container basis. In other words, if the container contains measurement cargo, it would then be freighted on a measurement ton basis.

[115] Q. And to the contrary, if it contains— A. It would be freighted on a weight basis.

Q. Regardless of the— A. Method in which it is transported.

Q. Do you have any idea, roughly, maybe in a percentage, in automobiles or vehicles, manifested by measurement tons in the steamship trade, in your company? A. I can just give a very general answer to that, that as I understand the trade that our company is engaged in, they are known as measurement trade. They are trades where most of the commodities moving are on a measurement ton basis, but I couldn't tell you the details of the percentage. It would be high.

Q. Marine Terminals, the Respondent here, does work for your company, does it not? A. They do. They are our stevedores in San Francisco.

Q. They perform terminal services for you, also? A. No, American President Lines performs its own terminal services at its main base of operations in San Francisco, which is Pier 50.

Peter N. Teige—for Complainant—Direct

Q. You have your own pier? A. We are assigned a pier by the San Francisco Port Authority, and we hire directly the terminal labor mainly for the receiving and delivery of cargo activities.

Q. How about in Los Angeles? [116] A. In Los Angeles we engage a contract stevedore, Associated Banning Company.

Q. That includes Long Beach, also? A. Well, we very infrequently call Long Beach.

Q. I see. A. Our main terminal there is a new one, Consolidated Marine Terminal at San Pedro, and there the terminal work is done by a company called Consolidated Marine, Inc., which is partly owned by American President Lines.

Q. I take it that your committee has received numerous protests from time to time with respect to the way the assessments are charged to the contracting employers on vehicles? A. Yes. We have had protests from, as I recall it, two steamship lines, Wallenius Line and Hanseatic Vaasa Line, and from several stevedore companies, all of whom are stevedores for Volkswagenwerk, and a protest from Winchester Agencies who act in some fashion as agents for Volkswagenwerk in San Francisco, possibly some larger area.

Q. Did you ever receive any complaint from any stevedores who handled vehicles for the Government? A. We had a general questioning of the funding formula by the Army which was passed to us through the stevedores, I believe.

I had forgotten that when I answered your earlier [117] question. The principal thrust of that inquiry had to do with Army containers, but I believe there was a reference to Army vehicles.

However, that was never pursued and never really became, as I recall it, any kind of a burning issue with the

Peter N. Teige—for Complainant—Direct

Army or any of their stevedores, and that meant, then, that all unboxed vehicles in the Army were and are assessed on a measurement ton basis.

Q. Has there been any cargo or commodity which moves in volume to the Pacific Coast or from it, other than vehicles, that has been called to your attention, on which the measurement assessment hits the cargo, that has a greater percentage increase as it does vehicles? A. No one has called any such situation to my attention, but I assume there are such situations.

Q. You assume that. On what basis do you assume that? A. That there are cargoes—

Q. I am speaking of cargoes that move in volume, of course. A. I missed that part of your question.

Q. Oh, I am sorry. A. I would say that no such instances have been called to my attention, and I withdraw my assumption.

Examiner Theeman: Mr. Ransom?

Mr. Ransom: I am sorry, but I just didn't hear you, [118] and perhaps you can tell me off the record what that question and answer was about. I just want to know.

Examiner Theeman: Off the record.

(Discussion off the record.)

Examiner Theeman: We will take a five-minute recess.

(Short recess.)

Examiner Theeman: On the record.

By Mr. Madden:

Q. Now, there were prompt protests from the representatives of Volkswagen or their contracting stevedores, were there not, immediately after the announcement of the assessment? A. There was a very prompt protest from

Peter N. Teige—for Complainant—Direct

Winchester Agencies on behalf of Volkswagenwerk, their principal, in the form of a letter dated January 17, 1961.

Q. You are referring, I believe, to Exhibit 7, which was an exhibit received in evidence yesterday. A. That is correct, and I believe at or about that time there was a protest from the Hanseatic Vaasa Line. I do not recall any protest at that time from stevedores, but those came in subsequently later that year, in May.

Q. In May? A. In May of that year.

Q. That was prior to your first six months review of [119] how the assessment was working out? A. Yes. The second committee, so-called, was formed in January of 1961, began meetings, had held a series of meetings, and sent out in May of 1961 a letter to the membership of PMA asking for suggestions as to a new basic method of assessment.

Though it asks for suggestions on a basic method of assessment, it was a natural enough reaction for people who had specific objections to raise them at that time, even though they did not take the form of proposing a new basic method of assessment, and in the letters that came in—and there were not very many—were the letters from the Volkswagen stevedores.

Q. Those letters pointed out, did they not, that the assessment, as imposed, was sufficiently great that it was impossible for a stevedore to absorb the assessment? A. I don't recall if the word "impossible" was used, but certainly it was suggested that they felt it was impractical to expect them to absorb the assessment.

Q. Didn't they actually indicate that the assessment was much greater than any possible profit that they could make out of handling Volkswagens under the present rate?

Mr. Ransom: Mr. Examiner, if he is going to be questioned about these letters, and, "Didn't they

Peter N. Teige—for Complainant—Direct

say so-and-so," I think the letters would be the best evidence. [120] He hasn't been bashful about putting in all kinds of exhibits so far. Let's put them in.

Mr. Madden: They aren't exhibits, so far, are they?

Mr. Zimmerman: No.

Mr. Madden: Then I don't object to putting them in.

Mr. Zimmerman: I take it back. They are in.

Mr. Ransom: Excuse me. Then let's refer to them by exhibit numbers.

By Mr. Madden:

Q. Did you first of all receive Exhibit 9, addressed to Mr. Saysette? A. That letter from Mr. Horsman of Marine Terminals Corporation to Mr. Saysette, of March 1, 1961, was subsequently referred to the funding committee. That was not one of the group of letters I was referring to, however.

Q. You were probably referring to Exhibits 16, 17 and 18? A. That is right.

Q. Similar letters, setting forth the facts which they hoped your committee would consider? A. Yes. They, as I recall, in each instance quoted a statement from one of their customers—I assumed it was Volkswagen—that set forth reasons why it was felt that [121] the assessment was unfair to this particular shipper.

* * *

[123] Would that be in line with your understanding of how your company handles containers, that is, the contents are assessed as manifested rather than the volume that they may take up in the container? A. Well, that portion of the brief note is discussing the problem of assessment of Army containers, and I believe the reference

Peter N. Teige—for Complainant—Direct

to contents as manifested under the word "recommend" refers to the decision of the committee which, if not taken at this time, was at least reflected as a coming decision that military containers should be charged in the same manner as commercial containers and, as I have indicated earlier, that would be on the basis of the contents as manifested.

Q. There is another entry here of, "Restraintive trade." Do you recall what the discussion was about restraintive trade? A. I think there was a general discussion probably raised by Mr. Lancaster, who is in touch with the PMA counsel, generally, about the activities of the fund. That committee and the PMA should be aware of the dangers of taking any action that would be in restraintive trade in connection with the administration of this fund.

Q. A general discussion? A. A general discussion. It was not a discussion about anybody being in restraintive trade but, rather, making

* * *

[125] * * * as Exhibit 42.

(The document referred to was marked Exhibit No. 42 and was received in evidence.)

Examiner Theeman: Off the record, it was stipulated between counsel that a memorandum of notes of the third meeting held on 2/21/61, in Mr. Lancaster's handwriting, and without objection it is admitted as Exhibit No. 43.

(The document referred to was marked Exhibit No. 43 and was received in evidence.)

Examiner Theeman: Without objection, a memorandum dated February 24, 1961, to committee members from PMA, is admitted in evidence as Exhibit 44.

Peter N. Teige—for Complainant—Direct

(The document referred to was marked Exhibit No. 44 and was received in evidence.)

Examiner Theeman: Mr. Madden?

By Mr. Madden:

Q. Mr. Teige, referring to Exhibit 43, on the second page there is an entry reference to autos to be kept on "M.T." basis. And then there are some indications on the side which I take it are votes of the members. Do you recall at that meeting what was discussed about autos and what was [126] decided? A. I remember in a general way that the position that had been asserted on behalf of Vokswagenwerk in the letters I have earlier referred to was considered again and discussed, and a vote was taken to keep the unboxed vehicles on a measurement ton basis, as in the original formula.

Q. Now, referring to Exhibit 44, the meeting of February 24th, Item 4 in those minutes, states, "The mechanization fund assessment for autos should be on a measurement ton basis regardless of how manifested."

Now, was that a new decision of the committee at that time? A. No, my understanding of that, and also the notation in the notes of the minutes of the meeting of February 21st, Exhibit 43, was a reference to the method of assessing for autos that had traditionally been used in the dues assessment.

Q. In other words— A. It was not a new decision but, rather, a reaffirmation of the existing formula.

Q. In other words, while cargoes generally might report—no—cargo generally handled by a stevedore might be reported for dues purposes on the basis of how it was manifested, and it was your understanding that automobiles, regardless of how manifested under the PMA rules from their [127] past practices, were to be reported on a

Peter N. Teige—for Complainant—Direct

measurement basis? A. Yes, and that isn't as bad as it sounds, because in most instances autos are on a measurement basis. It is what the steamship people know to be measurement cargo. The problem that had arisen was that some of the conferences I believe were freighting it on a unit basis and, therefore, something specific had to be done in computing the tonnage for the tonnage portion of the dues assessment to charge autos that were freighted on a unit basis.

Examiner Theeman: Would you read back, Mr. Lewis, the whole answer, please, to see that we have the continuity.

Just a moment, please, Mr. Madden.

(Record read.)

Examiner Theeman: Thank you.

Will you continue.

By Mr. Madden:

Q. When you say it was your custom to freight them on a measurement basis, was that the result of any particular study, or was that the conclusion of your committee? A. Well, when I said that, I was talking about my own knowledge of the freighting of automobiles.

Q. And that freighting—

Mr. Ransom: Let him finish.

Mr. Madden: Oh, I am sorry.

[128] The Witness: At the time this subject came up, there was discussion about how automobiles are freighted, and what had PMA been doing about autos in connection with the collection of the tonnage portion of the dues. In other words, it was a new subject to the committee, and the committee in this meeting and prior ones discussed all aspects of the problem.

Peter N. Teige—for Complainant—Direct

We discussed the possibility for the benefits that could be achieved by the stevedores or their customers in the handling of autos under the agreement, because obviously that was an important consideration in deciding what someone should pay.

By Mr. Madden:

Q. Before I ask you about that, in your discussion in general of how automobiles were freighted, was there any discussion of how they might have been freighted in full shipload under charter, or was it entirely under what the conference rated? A. No, we understood, as I recall it, that that was the way these autos of the complaining shipper, Volkswagenwerk, were being carried, that they were carried on charter vessels on, as I recall it, a lump sum basis or a vessel charter hire basis, and that stevedoring was being done on a unit basis and that, therefore, there was in effect no freighting in the ordinary berth term sense, but the recognition was that [129] it was measurement cargo normally for freighting purposes and, in fact, the PMA had for a number of years recognized that there was a special problem apparently about the freighting of automobiles and had established a rule about it in connection with the dues collection.

Q. Now, referring to the other things you mentioned, referring to a discussion of possible ways of effecting savings in auto handling, was there any study, other than the opinion of the committee members, with respect to what savings could be effected? A. We did not make, in the case of autos or any of the four or five other committees that became subject to any specific inquiry, at the committee, any detailed study of the changes in the methods of loading and discharging that could result in manhour savings under the work improvement agreement.

Peter N. Teige—for Complainant—Direct

We did have a representative in our midst who had made such a study, and we were familiar with an operator that had made savings in the handling of autos as compared with what we understood to be the conventional method of loading and discharging autos, and we did not specifically determine whether those methods were applicable here.

Our feeling in general was, as to the assessment in its broad application, that there were opportunities for savings that we couldn't be specific about, and that this in [130] large measure was what people were paying for.

In some instances the savings could be accomplished. In some instances possibly they could not, but our feeling was that here there was that possibility and, in fact, we were told that there were some steps being taken by the stevedores handling these autos to reduce the number of men they were using, but it was our policy, as I recall it, not to get into the measurement of actual savings or possible savings, as to each commodity.

We had, as I testified earlier, rejected that approach, and so our considerations of possible savings in connection with unboxed autos was just a general thing. It was not a specific study of exactly what the chances were, but we were generally aware that there was an operator who was carrying full loads of automobiles at very substantial reductions in their cost, and under circumstances that would not have in all likelihood been available under the conditions vis-a-vis the union prior to the execution of this work improvement agreement.

Q. And which operator was that? A. Matson Navigation Company.

Q. That is a special vessel that they have for vehicles? A. Yes. I believe it is a regular C-2 or C-3 type vessel, I believe C-3 type vessel, that they did some [131] conversion work on.

I cannot give you all the details of that, except to say that it was a war-built vessel that had been converted.

Peter N. Teige—for Complainant—Direct

Q. In the overall formula recommended and adopted, there is a rate of one-fifth for bulk cargo. Now, basically, what were the committee's thoughts on assessing bulk cargo one-fifth of general cargo? A. Well, this, of course, was a part of the historical traditional tonnage assessment method as had been used for the collection of dues, and there was some discussion about the desirability of keeping that in the formula and, as I recall, there was a view expressed by one member—I forget which one—that that historical exception should not be used here, but that view was not accepted by the committee.

Q. Well, isn't it true that bulk cargo obtains all favorable results of automation, as compared to general cargo or had before this agreement? A. Well, one of the many complications that this committee faced was the fact that there obviously had been changes in the method of stevedoring through the years from the beginning, and it was only because of the pleasures of collective bargaining that the industry was faced suddenly with the demand and insistence that there be some payment made for these changes.

The changes came solely because of the opposition [132] of the union, but there were changes, and the idea of loading a vessel with bulk cargo by essentially gravity methods, essentially, I believe is an old one, and I don't think the industry or the union thought of that as being part of what we were buying here, but that line gets fuzzy as to other commodities, other methods of loading vessels, as to whether they were the sort of things that led to the pressure from the union that finally culminated in this fund, or whether they were something that had been an innovation put into effect long enough prior to this time that the union didn't think it was the sort of thing that had to be paid for.

Certainly the bulk people have had fairly efficient operations, and have had for many years. That is not to say, however, that there weren't new savings that the bulk people couldn't achieve under these conditions. There

Peter N. Teige—for Complainant—Direct

were still excessive manpower used in some of the bulk operations, as I understand.

Q. Now, there was one other change, as I understand it, recommended by your committee that I will ask about, and that is the change with respect to the method of assessing for coastwise lumber. A. Yes.

Q. I believe that is Exhibit 2-F, on page 4.

Mr. Ransom: That is already in the record?

Mr. Madden: Yes.

[133] Mr. Herzfeld: Exhibit 2-F, like in Frank.

Mr. Madden: 4 and 5.

By Mr. Madden:

Q. Briefly, what was that change?

Mr. Ransom: I am sorry—excuse me, Mr. Examiner, but I would like to inquire whether he is asking him—what about this coastwise lumber is he asking him, what these minutes said, or which? I don't know.

Are you asking him of his own knowledge about the exception of the coastwise lumber, or are you asking what these minutes say?

Mr. Madden: I am asking of his own knowledge what the changes were with reference to coastwise lumber.

The Witness: Well, as best I recall that situation, there had been for a number of years, apparently, a special penalty payment made by the carriers of coastwise lumber to the longshoremen on a per manhour basis. They had to change their method of operations many years ago, and I believe the change was one, as I understand it, that permitted the crew of the vessels to do some of the work.

Peter N. Teige—for Complainant—Direct

In other words, it was a loss of work opportunity for the longshoremen, and I believe a saving to the operators, by using existing personnel on the vessels who are being paid anyway. In any event, although I don't have all the details of that, it was described to us as being a penalty [134] rate of a dollar per straight time hour and a dollar and a half for overtime hours that in some measure at least was paying for an improved efficiency in the handling of lumber, and the feeling was that the 27½ cents per ton in and out that was being charged under this formula for the work improvement fund was a duplication in part of that penalty payment.

Then there was another problem that I think illustrates that we are in the field of labor relations here. The union, the ILWU, had apparently in its agreement with a non-member carrier, or maybe more than one, I am not clear on that point, established a rate for a contribution for the right of that non-member to have the benefits of the work improvement agreement, and that rate was lower than the rate that the PMA was charging its carriers of lumber.

Well, that to me dramatizes the fact that this is a labor relations type problem, and the PMA had to do something about that, so that also contributed to the decision, as I recall it, but it was made up of both those considerations.

Q. Well, doesn't it also dramatize to your mind the fact that in the method that you assess this against your members, you can and sometimes do effect substantially the rates that are charged to the cargo that is being carried? A. Well, I don't understand this was concerned about [135] the cargo. I understand it was concerned about the carriers, in this case.

Peter N. Teige—for Complainant—Cross

Q. Well, it meant, did it not, that the carrier would either have to absorb a loss or perhaps lose business to a competing carrier if you didn't reduce the assessment and yet, at the same time, I believe it is the position of your committee that it is no concern how this money is collected.

You have established a method of assessment, and it is up to the member to raise the money from whatever source he can do so. A. I don't think it is a fair characterization to say that we are unconcerned with the ultimate effect of these assessments.

Q. I will concede that. A. And the committee has spent a lot of time considering those effects, and I cannot equate this rather unique coastwise situation to the unboxed vehicle.

Q. Well, of course, Mr. Teige—

Examiner Theeman: Gentlemen, I hope we are not getting argumentative, now.

Mr. Ransom: Well, I think we have been quite argumentative for a long time, but I think my witness can handle himself.

Examiner Theeman: I note that.

* * *

Cross-examination by Mr. Ransom:

* * *

[144] * * * on—I use M&M for mech fund, and I want to make sure that is clear. I don't know which—

Examiner Theeman: We have been using mech fund.

Mr. Ransom: All right.

Peter N. Teige—for Complainant—Cross

By Mr. Ransom:

Q. —for mech fund purposes, on a measurement basis?

A. Yes.

Q. Did it vary with the make of the automobile at all?

A. No.

Q. Their origin? A. No.

Q. Who the consignee or consignor was? A. No.

Q. And did the committee give any consideration to the possibility of a carrier or stevedore, or anyone, making a change in their traditional method of freighting cargo either from weight to measurement or measurement to weight, in order to avoid or lessen the assessment? A. As a precaution against that, the committee recommended and the Association adopted a rule that the contributions would be based on the tonnage formula as it existed in 1959, which was obviously before we came to a decision about this and, therefore, could not have been affected by the consideration of the impact of the contribution formula.

Q. So that it was the industry pattern prior to the [145] adoption of the plan that it would be used as a base? A. It was the industry pattern in effect in 1959.

Q. And did the committee consider and conclude what the industry pattern was with respect to unboxed automobiles? A. Yes, we were advised that that had been in '59, and before, on a measurement basis, irrespective of the way freighted.

Q. Under the plan, then, as set up, if an individual stevedore carrier or operator of cargo in an FIO situation perhaps makes some contractual arrangements which are not in accordance with the industry pattern, what was the method of determining its assessments? A. Well, we had adopted the industry pattern, and if I understand your question I believe for the great bulk of the organizations and people affected, that pattern worked out, and that was

Peter N. Teige—for Complainant—Cross

not to say that there wouldn't be some instances where possibly that industry pattern might not work out.

Examiner Theeman: Would you like to have that question read back to you?

The Witness: I think I understand the question. Maybe I am having trouble—

Mr. Ransom: I am satisfied with the answer.

The Witness: —answering.

Mr. Ransom: Very good.

[146] *By Mr. Ransom:*

Q. After you were appointed the second time, Mr. Teige, and after you had given some consideration to the various proposals, did you issue a bulletin or memorandum to the members asking for ideas from various people? A. Yes. On May 15, 1961, the committee sent to all PMA members a letter which pointed out that the committee was continuing to study the fund and the method of assessment, and that it invited suggestions and proposals from the members on any other basic methods of contribution that might be used.

Mr. Ransom: May we go off the record while I get this document?

Examiner Theeman: Off the record.

(Discussion off the record.)

Examiner Theeman: On the record.

Without objection, a letter dated May 15, 1961, from PMA to its members, is admitted in evidence as Exhibit 45.

(The document referred to was marked Exhibit No. 45 and was received in evidence.)

Peter N. Teige—for Complainant—Cross

By Mr. Ransom:

Q. Before, Mr. Teige, considering the vastness of this program, did you receive many protests to the position taken by the committee to adopt the tonnage basis for assessment? [147] A. There were two times that protests came to the committee basically. The first was immediately after the initial decision was taken by the membership on January 4, 1961. Considering the thousands of types of transactions that were being affected and the hundreds and hundreds of commodities, many dozens of operators of various types, and in various kinds of operations, the committee thought it was quite remarkable that there were really only half a dozen situations that a vote came in.

The Volkswagen complaint was made by a number of parties, as I have indicated. The scrap metal point which was raised almost immediately and corrected almost immediately, the coastwise lumber problem which we have mentioned, and then there was a complaint by the stevedores handling bananas, and it was their hope that bananas could be treated for assessment purposes as bulk cargo.

They pointed to the fact that the bananas were now typically unloaded on conveyor belts, that they were not packaged or boxed, that they were not marked, and that they had met certain of the requirements at least of all cargo.

That request was rejected by the committee, and that rejection was affirmed by the board of directors, the feeling being that this was a breakbulk type of operation in the first place, and I think there were also some feelings that here certainly was an operation that certainly stood a [148] good opportunity of making a saving under the fund, so from that standpoint, also, there was merit in rejecting the decision, but basically it was an application of the historical industry pattern to that commodity.

Peter N. Teige—for Complainant—Cross

Q. Were there any other protests that were considered and rejected? A. I was going to mention two more. The Army had a complaint about both its conex containers and the assessment of autos. I have mentioned the autos.

Q. I don't think you have explained what happened to the autos in the Army. Would you do that? A. Well, they raised the question of whether it was appropriate to assess the autos on a measurement basis, and consistent with the position that the committee took on that issue they were informed that it was, that we were going to treat the Army in the same exact fashion that we treated the commercial operators, and they seemed satisfied with that or, in any event, we heard nothing more about the auto complaint.

The container matter I won't go into here unless someone wants me to, but that was also resolved with the Army, and then there was one other complaint that comes to my mind, and that was a complaint of Isbrandtsen Steamship Company, and I believe also their stevedore, but those stevedore complaints generally just come in along with their [149] customers' complaints.

In any event, it was a complaint raised by Isbrandtsen who were, as I understand it, starting a ten-ton container operation between the Pacific Coast and East Coast of the United States by way of Puerto Rico, and they were planning to load the ten-ton containers with edible rice in bulk, not in bags, for carriage to Puerto Rico.

They argued at some length—we had written presentations, and we had also asked Mr. Krabbenschmidt, I believe—he is their local manager—to appear before the committee so that we could learn more about this and question him about it.

They requested that the bulk rate of five and a half cents be applied to this edible rice. This apparently, on the theory that since it could be carried in bulk at that

Peter N. Teige—for Complainant—Cross

rate, that even though they weren't carrying it in bulk, it should nevertheless bear the same rate.

The committee wrestled with that question, as I recall it, at two or three meetings, and finally recommended that this request be denied, and that was affirmed by the board of directors.

My recollection was that the committee felt that if rice is in bags, it is breakbulk cargo and would bear the general cargo rate, and putting it in a bigger container, in this case a ten-ton container, still made it breakbulk cargo.

[150] Now, it wasn't, unless they were prepared, and in a position to have it shipped as bulk cargo, that they would bear the bulk rate.

That decision I don't believe was too happily received by the applicant, but we did give it our fullest consideration, and the entire committee voted against their position and, as I say, it was affirmed by the board of directors.

I think those are all of the complaints that have been registered against the plan, and now our committee is still in being and available for further complaint, but now more than two years later these have been the complaints we have received.

Q. You indicated in your examination by Mr. Madden, and as indicated by Exhibit 44, that sometime in February there was consideration of the committee on the question of automobiles, as to whether they should be on a measurement basis or what they should be on, and turned down.

Did your committee at a later date receive any requests from Volkswagen or its stevedores for a reconsideration?
A. There was such a request, and in November of 1961 it was arranged for the Volkswagenwerk people to appear before the fund committee. That meeting was arranged, as I recall it, either at the request of, or at least in friendly [151] arrangement with Mr. Peter Curtis of Winchester Agencies, Inc.

(Tr. 151-152)

123a

Peter N. Teige—for Complainant—Cross

Q. That is the gentleman sitting over there? A. Yes, and he had advised that on November 24th a Mr. Klaffs of the Volkswagenwerk in Germany was to be in town and available for this meeting.

Q. As I recall, it was the day after Thanksgiving. A. It was November 24, 1961.

Q. And will you tell us generally what took place at that meeting and what was discussed? A. My recollection is that our committee was well attended. Mr. Curtis was there, Mr. Klaffs of Volkswagenwerk, Mr. Calhoun who was then their attorney in this matter, and I believe there were representatives of some of the stevedores on the Pacific Coast who handle the Volkswagenwerk. It was an extended meeting, and my recollection is that Mr. Klaffs himself presented their position and presented it very well.

And there was a general discussion of the problem. It is my recollection that Mr. Klaffs' concern—I hesitate to say his major concern, but a concern which is the one I best remember him discussing was as—was that this assessment would embarrass Volkswagen in their competitive fight with other compact cars.

He told us that this was a very competitive market, and that they were concerned about their competitive position [152] as a result of this assessment.

Q. Did he indicate any figures along that line? A. Well, the assessment, as I recall it, is something over \$2.00 per auto.

Q. And Mr. Klaffs thought that \$2.00 would have some effect on the competitive sales of their automobiles. Is that what you are saying? A. My recollection is that he said it would have, and obviously would to some degree; the question would be the degree.

Q. Well, now, did the committee make a decision at that time and advise Mr. Klaffs of what its decision was, or did the committee subsequently meet? A. The com-

Peter N. Teige—for Complainant—Cross

mittee, according to my records, met on November 29th, on December 8th, on December 12th. I believe that this subject was discussed to some degree at all or some of these meetings, and it was decided to reject the protest.

I believe again this was the unanimous feeling of the committee, and on November 14th the board of directors had before them again this subject of the unboxed auto assessment, and they again approved the existing program.

* * *

[156] Q. Mr. Teige, frequently in this hearing there has been the expression "berth term" or "berth operators." Under what is called berth terms, who hires and pays the stevedores? A. The carrier.

Q. When cargo is shipped on an FIO basis, what does that mean? And who hires and who pays the stevedores? A. When cargo is shipped FIO, that is free in and out, the loading and discharging costs are borne by cargo rather than the carrier, and the ocean freight rate is solely for carriage.

Q. Can you state whether the preponderance of general cargo in and out of the Pacific Coast is on berth terms, or on FIO basis? A. The preponderance—talking about revenue tons—is I believe on a berth term basis. In 1959, the Pacific Coast, through the use of ILWU labor, handled in the neighborhood of 25 million, over 25 million tons, of which 17 million were general cargo and eight million bulk cargo. The bulk cargo would be most frequently on a basis where the shipper would pay for the loading, although not always. The general cargo would in most instances be on a berth term basis, though not always.

Q. Automobiles are general cargo, are they not? [157] A. Automobiles are general cargo and, of course, I said in most cases, and here we have an instance where there is an exception to that, where you have a cargo that is or

Peter N. Teige—for Complainant—Cross

has been commonly berth term cargo carried on an FIO basis.

Q. You are referring to the Volkswagen? A. The Volkswagen.

Q. FIO arrangement? A. Yes.

* * *

Q. Is it your understanding that Volkswagen is shipped primarily on an FIO arrangement? A. Yes, that is my understanding that the shipper, Volkswagenwerk, directly engages the services of the stevedore, at least at this end, for the discharge of the automobiles.

* * *

[158] Mr. Madden: It is stipulated that for the past five years the preponderance of Volkswagens which have been brought to the Pacific Coast have been brought in under charters, or on the contractual FIO arrangements.

* * *

[161] Mr. Teige, have you made a review and can you state whether, following the M&M fund plan in the conferences that you belong to that affect the West Coast longshore labor, that are concerned with West Coast longshore labor, increased their rates to reflect the M&M or the mech fund assessment to the extent those assessments were passed on by stevedoring companies? A. I believe I am safe in saying that no conference that I am familiar with on the Pacific that had a terminus on the Pacific Coast—that would be both outward and inward conference—made any freight rate changes based on this assessment, the problem being that these rates are determined by competition in the sense that there are frequently carriers who operate outside of these conferences; and that has been particularly true in recent years with the overtonnaging of world shipping, and the result has been that many of these conferences have been reducing rates rather than increasing rates.

Peter N. Teige—for Complainant—Cross

But I know of no conference that increased its rates because of this assessment. That is not to say that they wouldn't like to or that they won't some day do that, because obviously, in the end, if they are going to stay in business, the carriers have to pass on all of their costs from whatever source, and a little more for a profit.

Q. Mr. Teige, if the M&M plan is successful, there [162] would be no need to pass on M&M fund assessments to the extent the carriers got it, would there, because you would presumably have some advantages. A. That is a good point. I should have talked in terms of any net cost, and I think you can get a lot of argument in the industry as to what the savings have been that have flowed from this agreement.

There are many that you can actually put your finger on, but it would be difficult overall to say where the balance sheet is now between the outflow for contributions and the inflow for savings, but that is very true, that the net cost may be industrywide negligible, but that is industrywide and not on an individual basis.

Q. From your knowledge of the plan and its operation, both as an operator and a committee member, was there any agreement among the PMA members or between the members, or with PMA and the Association, that the contributions paid by the direct employers would in turn be paid to them by their customers? A. No such agreement whatsoever.

Q. In APL's case, what happened to your stevedoring arrangement after the M&M fund went into being? A. Very shortly after the assessment began and the work improvement agreement went into effect, and you could start making efforts to achieve savings under the agreement, [163] we put our San Francisco stevedore on a cost-plus basis, as an emergency measure, to assure that any savings that came from his change of operations would accrue to us immediately.

Peter N. Teige—for Complainant—Cross

Prior to that, our rates were on a commodity rate basis, and unless those rates had been all renegotiated, why, we would have gotten no benefit from the saving. That arrangement, as I say, was an interim one, and since that time these rates have been put back on a commodity basis which would, as is usually the case, reflect the negotiations between the stevedore and the carrier, as to the appropriate charge for loading and discharging of those commodities, taking into account the expense of that work.

Q. In the cost-plus arrangement, would the cost-plus—would the cost include a listing of such things as welfare plan, PMA dues, pension plan, and possibly the M&M fund? A. Yes, it would include all of the labor costs, and I would include the M&M assessment as a labor cost, all of the labor costs of the stevedore.

Q. Was there any agreement among PMA members, or with PMA, that if the stevedore company's assessment was passed on to the carrier, that the carrier in turn would pass the amount on to their customers? A. No, of course not.

Q. If the stevedore could choose all or a part of the M&M fund, would he be in breach of any arrangement or [164] understanding? A. None whatsoever. He would be perfectly free to do that if he was able to do it, or for business reasons thought that desirable.

Q. If the stevedore could or did not make its contributions as assessed to the M&M fund, would he be in any violation of any agreement with the union? A. Yes, the stevedore, as an employer, has in each case executed or had executed for him on his behalf an agreement with the ILWU that includes a provision that the contributions to the mechanization fund must be paid on the basis determined by the Association, so it has an obligation in the collective bargaining agreement.

Peter N. Teige—for Complainant—Cross

Q. Mr. Teige, you spoke of these conferences as rate-making conferences. Do you put the Pacific Maritime Association in that category? A. Certainly not.

Q. Suppose that the Federal Maritime Commission for some reason, which I can't conceive of, were to hold the assessment against Volkswagen as somehow or other illegal, what effect do you think that might have on the plan? A. Well, one can speculate about that, that the basis of their complaint has to do with the relationship of the labor cost, as related to the assessment. There is a whole spectrum of relationships of that kind in the industry, [165] involving not only every commodity which has a different relationship of labor needed to move it, as compared with the assessment, but different between each operator, because one operates one way, and one another, and one more efficiently and one less efficiently, and so on.

So there would be a vast inquiry, if everybody were to come either to the PMA or to hopefully the FMC, so that we wouldn't have to deal with them to litigate about exactly where each operator, as to each commodity, would fit into that spectrum.

There would just be a part of the picture, because it doesn't seem to me you can leave out the question of the benefits that potentially, at least, might be available to each operator, and if that is thrown into the picture then it further compounds the matter, and I honestly believe, after having spent many, many hours and days on this perplexing subject, that that would create a very serious situation for whoever it was that had to wrestle with the decisions that would flow from that turn of events.

Mr. Ransom: That is all.

*Peter N. Teige—for Complainant—Redirect**Redirect examination by Mr. Madden:*

Q. Mr. Teige, you mentioned I believe that autos are a measurement type cargo. You were speaking about that from the standpoint of a steamship company operator, were you [166] not, at least for rate-making purposes? A. Yes, there isn't any other basis that I know in which to use that expression.

Q. Measurement tons normally are not any basis for a stevedore to fix his rates, are they? Do you know, or are you able to speak on that subject? A. Well, I know generally about the stevedore business. My understanding is that many stevedores charge for their services on a revenue ton basis, and, therefore, if a certain cargo is on a measurement ton then he will have so much a ton, based on a measurement ton.

If it is a weight ton, he will have a charge of so much a ton, based on a weight ton.

Q. But basically isn't it the time it takes to handle a particular cargo that controls the stevedore's rates? A. Well, there is no question about it, that in deciding how much to charge per ton, whatever basis it is on, the stevedore looks to his cost, and his cost would be made up of all the things that a stevedore's costs are made up of, primarily labor, because he is basically a labor contractor.

Q. If he makes it up on his cost, then he may convert those costs against cargo on a measurement ton or on a weight ton basis, either way that he sees fit. Is that what you mean when you say that he could use either term? A. I think that he could charge for his services on [167] any basis that he works out with his customer, and there are many, many ways it is done. The most common way I have always assumed was on a commodity rate basis.

Q. But taking the example that Mr. Ransom gave you, if he were handling lead and he knew how many hours it took to handle the lead, he could readily enough, I assume,

Peter N. Teige—for Complainant—Redirect

convert those hours into a rate on a measurement basis, could he not, if that would net him the same amount of money as if it were a weight basis? A. I see no reason why either a stevedore rate or a freight rate can't be put on either basis. It just changes the amount.

Q. And as in the case that we are talking about in this proceeding, there is no reason why he can't be on a unit basis if the unit is an appropriate measure of converting the hours into compensatory rate? A. Well, by no reason, you mean that that is a logical—

Q. That is right. A.—and a conceivable way of doing it!

Q. Yes. A. That is right, I think stevedores do charge on a unit basis for cargo like automobiles.

Q. And you mentioned also about the industry pattern in 1959, as manifesting autos on a measurement basis. Are [168] you familiar with an industry pattern, as such, or were you referring to the pattern that the PMA had adopted as its pattern for its assessment of dues? A. When I used the expression industry pattern, I was talking about the PMA method of assessment for its dues, the tonnage portion of its dues assessment.

Q. Now, in the original adoption of the assessment plan, it was specifically provided that your committee would review the effect of the assessment within six months, and periodically I assume thereafter, and you testified that you had sent out this notice asking for suggestions as to the—I suppose I ought to refer to the letter, Exhibit 45—you requested as an aid to your work that any PMA member who has a proposal to make for a new or improved method of assessment for the support of this fund should set forth their views in writing to the committee as promptly as possible for its consideration of such a proposal.

Do I take it that the committee was only to consider new overall methods of assessments, or did you feel that it was your duty to consider whether certain exceptions

Peter N. Teige—for Complainant—Redirect

might be appropriate to the method that you had already adopted? A. Well, I think that we felt we had both responsibilities. The fact that we, on the one hand, did discuss the whole problem as a general thing, including a consideration of a plan suggested by the Matson Navigation Company, [169] the details of which escape me now, but it was a general plan, and also at the same time during this same period, we went through the procedure with Volkswagenwerk on their specific request for an exception to the present formula, and it was during this period that we considered that problem that had culminated in the meeting of November 24th.

Q. Well, that was the question that I really wanted to bring out. I think you have answered it. Your committee would, if they felt it was appropriate, recommend an exception if they felt it was inequitable, an exception rather than an adoption of an entirely new program? A. Our committee—

Q. In other words, to put it specifically, would you have considered it within, would you say, duties— A. Scope.

Q. Scope of your committee, if you thought that the vehicles should be assessed on, for example, a unit basis, that it would be appropriate for you to recommend such an exception to the Board, or would you consider that beyond the scope, that it would have to be an entirely new method of assessment that applied to all cargo? A. No, we considered it part of our job to re-examine what we had already done on any specific details, and again I give as the prize example of that the Volkswagen situation where we held a number of meetings and spent a good deal of [170] time going over that problem, and finally had to vote and resubmit our vote to the board, so that that got full consideration both by the committee and by the board of directors.

Q. And the other prize example of the coastwise lumber that you felt was entitled to relief— A. Yes.

Peter N. Teige—for Complainant—Redirect

Q. I believe you mentioned that your committee was surprised, perhaps just pleasantly surprised, that there weren't more suggestions or complaints at the end of six months from more types of cargo; that was your statement, wasn't it? A. Yes, and to—

Q. Well, I didn't mean for you to elaborate on it. I didn't want to misquote you.

Did you think perhaps that this might have been because your method of application had only ended in assessment that hit just these particularly few complainers, or did you think the rest were just silent? A. I can only speculate about that. It is my personal view that there was a general recognition of the complexity of the job that had been given the committee, and that it had in good faith and conscientiously tried to reach a plan that we could live with, and that it had done that in the main, and that people recognized that it had [171] done that.

Q. Well, for the record, I would like to say, Mr. Teige, that I wouldn't for the world question that you were doing the very best you could. A. You are just wondering if that best was good enough.

(Laughter.)

Q. No, we just disagree with it.

If the facts were that there were only a few complaints, not only at this time, six months later, but apparently very limited for over two years that the plan is in effect, how does that jibe with your concern that if relief were granted in one particular case, that would open up a whole spectrum of complaint from cargoes that you had never even heard from? A. Well, I say that because it seems to me that the basis on which relief is being requested here is such that once that section were established in that one case, then there would be a multitude of people who will say, "Me, too, if that is the game going to be played I want to get

Peter N. Teige—for Complainant—Redirect

in that game, and I will make the same sort of complaint. I didn't get anything out of this fund." Or, "I am paying more than the next fellow, and I do it this way, and he does it that way," and so forth.

I think people who have had those feelings have [172] restrained themselves in the interest of an overall workable program that they consider worth while, but I am not sure they would if they saw relief granted on that principle.

Q. You stated that to the best of your knowledge the carriers who operated on berth terms had absorbed all increases, if any, that might have resulted from the mech fund assessment on their contracting stevedores, is that correct? A. At least at the time that happens. Now, there have been in recent months a few conferences that have been able to raise their rates, and then you begin to be unable to say that because obviously, when there is a general five per cent increase of rates, it is to cover the rates that the carriers are concerned about, and this might be one of them from the standpoint of cost.

Q. If an FIO non-member's assessment, or the assessments on his contracting stevedore was reduced, that would necessarily tend to increase the ultimate cost that the member carrier might have to bear in the long run. Wouldn't you say that was a correct conclusion? A. I wonder if you would read that question to me.

(Record read.)

The Witness: Any reduction of anyone's assessment will increase everybody else's—

[173] *By Mr. Madden:*

Q. I will accept that. A. —for the reason that this is a lump sum that has to be raised.

* * *

Fred R. Smith—for Complainant—Direct

Mr. Ransom: I think there might be some possible confusion as to what was meant by everybody else's, and I would like to ask him to explain what he meant by everybody else's.

Recross-examination

The Witness: Well, what I meant to say was that if any PMA member's contribution is reduced, it increases the contribution of all other PMA members. I did not mean to suggest that any non-member of PMA who is not participating in this program and fund would be involved in that contribution.

And when I say a member's contribution, that, of course, could be a contribution made by a member stevedore with respect to work performed for a non-member carrier or a [174] non-member shipper, if it were an FIO arrangement.

* * *

[176] Whereupon, FRED R. SMITH was called as a witness by and on behalf of the Complainant and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Madden:

Q. Would you state your full name, Mr. Smith. A. Fred R. Smith.

Q. And what is your occupation? A. I am president and general manager of Seattle Stevedoring Company.

Q. And that is in Seattle? A. Washington.

Q. Are you an officer or a member of the board of PMA, Pacific Maritime Association? A. Yes, sir, I am a member of the board of directors of the Pacific Maritime Association.

Fred R. Smith—for Complainant—Direct

[177] Q. I take it that you are a representative of the group designated as a stevedoring group? A. Yes, sir.

* * *

[178] Q. Do you discharge Volkswagens in the Seattle area? A. Yes, sir.

Q. And who employs you? A. In this particular case, the Volkswagen company.

Q. Do you discharge Volkswagens for anybody else? A. Oh, yes.

Q. Who else? A. Hanseatic Vaasa Line, and some other lines, and other berth liners that haul Volkswagens, of which these contracts are direct with the steamship company.

Q. Upon the adoption by the Pacific Maritime Association of the method of assessment for the mech fund, did you ever protest to the PMA as to the impact of that assessment on Volkswagens? A. Yes, we did. It is a matter of record with the PMA.

Q. Did you advise PMA directors that it was impossible for you to pay that assessment with the rates that you obtained for discharging Volkswagens? A. I believe our letter indicated with rates that we [179] then had, we could not absorb assessments as set out by the funding committee.

* * *

Q. Without being specific, about how much approximately did the mech fund assessment, if added to your rate, increase the total amount of that rate? A. It varied from 20 to 50 per cent, I would say. Again, that is only from observation, and not from an accounting standpoint, just general.

* * *

(Tr. 180-181, 183, 192-193)

136a

Fred R. Smith—for Complainant—Cross

[180] *By Mr. Madden:*

Q. Is there any cargo which you discharge, the cost of which is increased in as great a percentage as the cost is increased for Volkswagens by reason of the mech fund assessment? A. No, sir, there is no commodity with that percentage [181] of increase.

Q. Have you any idea about what type of cargo would be the closest percentage? A. Again, in round figures, I would say from four to ten per cent.

* * *

[183] Q. How does the volume of all automobiles that you handle in your port compare to the number of Volkswagens that you handle? A. I would say Volkswagens were approximately 75 per cent of all the foreign cars delivered in our area.

Q. Since the mechanization program went into effect, have you been able to reduce in any way your expenses for discharging Volkswagens by reason of the latitude given waterfront employers under that agreement? A. No, sir.

Q. Have you been able to plan or do you anticipate that you will be able to develop any such improvement in the foreseeable future under the latitude granted you? A. Not to my knowledge. I cannot see at this time such an arrangement.

* * *

Cross-examination by Mr. Ransom:

[192] Q. In handling Volkswagens in connection with common carriers on berth terms, have you made the assessments into this fund? A. Into the PMA fund?

Q. Yes. A. We have paid it into PMA for the fund. I assume they fund it in there, yes, sir.

* * *

Q. Have you paid into the fund, paid into the PMA for the fund assessments in connection with your FIO arrangements with Volkswagenwerk? [193] A. No, sir.

Ellet G. Horsman—for Complainant—Direct

Q. Are those the only assessments which are outstanding as far as your company is concerned? A. We have a 90-day time of collection of the payment to PMA and, to my knowledge, we are current.

Q. Except for in connection with Volkswagens? A. Right.

Q. Is your contract with Volkswagenwerk as a cargo owner or as a carrier? A. We have a contract with Volkswagen to discharge automobiles for so many dollars per unit, whether they be a contract cargo carrier, a charter or owner, or anything else. We don't go into that. We have a contract to discharge so many for so much per unit.

Q. Could you give us the exact name of the company with whom you have that contract?

I am sure you will have to spell it. A. Volkswagen, V-o-l-k-s-w-a-g-e-n-w-e-r-k, A. G.

* * *

[202] Whereupon, ELLET G. HORSMAN was called as a witness by and on behalf of the Complainant and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Madden:

Q. For the record, will you state your full name. A. Ellet G. Horsman.

Q. And your position? A. Vice-president, Marine Terminals Corporation; vice-president, Marine Terminals Corporation of Los Angeles.

Q. Those are two separate corporations, are they? A. Yes, sir.

Q. Are they affiliated in any way? A. Same directors, same stockholders.

Ellet G. Horsman—for Complainant—Direct

Q. What businesses are those two corporations engaged in? A. Contracting stevedores and ocean terminal operators.

Examiner Theeman: And what kind of terminal operators?

The Witness: Ocean.

[203] *By Mr. Madden:*

Q. And who do you perform this work for in general? A. Both common carriers and contract carriers, and all forms of marine transportation, both by vessel or barge.

Q. Do you discharge Volkswagens? A. Yes.

Q. In San Francisco and Los Angeles? A. San Francisco and Long Beach, yes, sir.

Q. Long Beach? A. Yes, sir.

Q. The ones in San Francisco are discharged by Marine Terminals Corporation? A. Yes, sir.

Q. And the ones in Long Beach by Marine Terminals Corporation of Los Angeles? A. Los Angeles.

Q. How long have you been discharging the Volkswagens? A. The first vessel was in 1954 in San Francisco at Pier 39. The name of the vessel was the VAASA LAVIA.

Q. Was that vessel on the Hansiatic Line? A. No, she was then owned by the Lavia-oy. She was serving independent from any line. I believe that was before the formation of the Hansiatic Vaasa Line.

Q. Since then, have you discharged Volkswagens for common carriers? [204] A. Yes, sir.

Q. Both in San Francisco and Los Angeles? A. Yes, sir.

Q. And also for chartered vessels? A. Yes, sir.

Q. Now, in the case of common carrier vehicles, who contracts with you for your services? A. The owner, through his agent or representative.

Ellet G. Horsman—for Complainant—Direct

Q. You mean the owner of the vessel? A. The owner of the vessel, yes, sir.

Q. In the case of chartered vessels, whom do you contract? A. On Volkswagens?

Q. On Volkswagens. A. In the case of Volkswagenwerk, we deal directly with the factory, with Wolfsburg, Germany, and our contractual arrangement is a stevedore work order on a ship to ship basis, assigning us the performance work.

* * *

[205] Q. When you referred to work order, Mr. Horsman, is this the type of work order you received from Wolfsburg on chartered vessels? A. Yes, sir.

Mr. Madden: I offer this in evidence as Exhibit 51.

Examiner Madden: Without objection, the work order referred to is admitted in evidence as Exhibit 51.

(The document referred to was marked Exhibit No. 51 and was received in evidence.)

By Mr. Madden:

Q. According to the work order, Mr. Horsman, there are some—strike that—there appears in the left lower portion of the order a provision that says that all work services to be rendered for an eight-hour day only, at the commodity rate of blank dollars per vehicle to place of rest on dock, i.e., including handling; and above that there are listed three different types of vehicles, 707 sedans and convertibles, 75 transporters, 18 Ghias. Was the rate per vehicle the same for all those types of vehicles? A. Yes, the rates are the same regardless of what type of vehicle it is, as far as Volkswagens go.

* * *

Ellet G. Horsman—for Complainant—Direct

[213] Q. In Exhibit 7, which is the letter from Winchester Agencies to Pacific Maritime Association, dated January 17, '61, at the top of page 2 it is stated that—

Mr. Zimmerman: Pardon me, what was the exhibit number?

Examiner Theeman: 7.

Mr. Madden: 7.

By Mr. Madden:

Q. It is stated that the current—that would be the [214] January '61—discharged cost of a shipment, assuming approximately 50 per cent Volkswagens and 50 per cent transporters, would be about \$10.45 per auto. Is that approximately your— A. Yes, sir.

Q. —recollection of that charge at that time? A. Yes, sir.

Examiner Theeman: Let him finish the question, please, Mr. Horsman.

By Mr. Madden:

Q. Is the present average cost of discharge per auto —does it vary more than, say, 40 cents from this cost?

Mr. Ransom: Mr. Examiner, may I ask that we define what he is talking about? Is he talking about the cost of the Volkswagen; in other words, the commodity price; or is he talking about the cost which Marine Terminals undertakes, to which they would add the cost?

By Mr. Madden:

Q. Is that the average commodity price which you charge Volkswagen?

Ellet G. Horsman—for Complainant—Direct

Examiner Theeman: Your question refers to Exhibit No. 7?

Mr. Madden: Yes.

Mr. Zimmerman: Now, I would like to interpose an objection to any further questioning along this line. As I [215] understand, the purpose of this testimony was simply to establish that it was necessary for Marine Terminals to reflect these assessments in its commodity rate, so that ultimately they would be paid by Volkswagen.

I don't believe that there is any question that that is so.

Mr. Horsman has testified that these costs must be reflected because they operate on a cost-plus basis. Now, what the actual amounts are I believe is irrelevant. The costs and commodity rates in the stevedoring industry are highly confidential.

Unless there is some compelling reason for getting those figures on the record, I would object to any further questions along this line.

Mr. Madden: Well, one of the fundamental complaints set forth in this proceeding on the part of Volkswagen is the percentage increase in the cost of discharging Volkswagens, which inevitably results from the imposition of this assessment charge on top of the pre-existing charges, and if we don't have the pre-existing charges there is no real basis for us to show what the percentage of increase is in this proceeding.

Mr. Zimmerman: You have on the record a statement of what the costs were at the beginning of the mechanization fund. In the absence of any evidence to the contrary, that [216] gives you your percentage. I don't know as it is necessary to go into details of later costs.

Mr. Madden: That solves one thing.

Ellet G. Horsman—for Complainant—Direct

Now, another element of proof of Volkswagen is that there have not been effected any material savings in the handling of Volkswagens since the introduction of these mechanization systems, and if we cannot show whether the rates are approximately the same now as they were before, or the variations in the rates, we have at least one source of such proof barred from us.

Mr. Zimmerman: We have no objection to questions as to whether they have been able to effect any savings.

Examiner Theeman: It would seem to me, gentlemen, that at the moment, insofar as any testimony to be adduced deals with the figures already in the record, you therefore should have no objection to them.

Mr. Zimmerman: The figures already in the record?

Examiner Theeman: That is right.

Mr. Zimmerman: He has asked an additional question about current costs.

Examiner Theeman: I haven't heard any questions yet dealing with current costs.

Mr. Madden: I was leading up to one, Mr. Examiner, when this discussion started.

Examiner Theeman: You were leading to it, but I [217] hadn't heard it yet.

Mr. Zimmerman: Well, it was my understanding that he had asked the question about current costs, and that was the question to which I directed my objection.

Mr. Ransom: It was at that point that I asked about current costs, and he said he meant commodity rates.

Mr. Madden: That is true.

(Tr. 217, 219)

143a

Ellet G. Horsman—for Complainant—Direct

Mr. Zimmerman: I have no objection to Mr. Madden questioning Mr. Horsman about any rate to be assessed under the mechanization fund.

Mr. Madden: Basically, this is a question of an alleged confidential matter with rates as it applies to these particular sets of circumstances, but I can't see how this confidentiality enters into the testimony that is given at this hearing on what the rates charged for the discharge of Volkswagens by the Respondents are, and what they would be with the imposition of the cost of the assessment.

Examiner Theeman: Let's go off the record.

(Discussion off the record.)

Examiner Theeman: Let's go on the record, please.

By Mr. Madden:

Q. Since January of 1961, have there been any substantial increases in your gang hour costs for handling Volkswagens? A. Other than the wage increases?

* * *

[219] Q. During this period, were you able to increase the productivity per gang hour in the handling of Volkswagens? A. The productivity—

Q. Rate per gang hour. A. I believe we did from 1961; through better vessels, we were able to increase our production.

Q. And when you say better vessels, what does that mean? A. Frankly, that is the key to this whole thing, the vessel, because the ship gang controls the production and not the dock gang, and as the vessels improve, in other words, McGregor hatches or pontoons, special decks for the securing of automobiles on the vessel itself, the gear on the vessel is the key to the production of automobiles.

Ellet G. Horsman—for Complainant—Direct

Q. That makes it easier to remove the vehicles from the vessel? A. Yes, sir.

Q. Is that what you are saying? A. Yes, sir, and the easier it is the more cars an hour they put out.

Q. Short of the improved rate, by reason of improved vessels, have there been any other methods of handling vehicles which would increase the rate of productivity? [220] A. I am sorry, what do you actually mean?

Q. Anything— A. In the form of a machine or man-hour, or—

Q. Any mechanical devices—I am talking about mechanization or work improvement practices which would reduce the number of gang hours needed for handling Volkswagens. A. We use the chain gang structure on the vessel we did when we first handled the cars in 1954. Now, I say the key to the unloading of Volkswagens or any other automobile or any cargo is the ship's gang which is separate from a dock gang, but as far as the ship goes there hasn't been any change in gong structure.

* * *

[223] Q. Assuming that a commodity is greater in volume on a measurement basis, on a measurement ton basis, than on its weight for the freight making purposes, it could be manifested, could it not, on a weight basis, but at a higher rate, to reflect the extra volume? A. I would think that they would.

Q. So that how it is manifested has little to do with the problems of a discharge or a loading operator? A. That is correct.

Q. Is that correct? A. That is correct, sir.

* * *

[224] Q. Referring back to this average cost in '61 of approximately \$10.45 per unit, or a rate of discharge of \$10.45 per unit, in computing such a rate what do you as a

Ellet G. Horsman—for Complainant—Direct

stevedore expect to receive over and above your costs?

A. Direct costs?

Q. Over and above your direct costs. A. Profit?

Q. Including profit.

Mr. Zimmerman: I think I might—the profit margin, again, I think is a confidential item for a stevedore contractor. If Mr. Horsman is able to give some sort of a round figure which will satisfy Mr. Madden, that might not be objectionable, but I don't believe he should be asked to state what his—

Mr. Madden: A range.

The Witness: Over our direct cost, we put it on so many dollars a gang hour, ranging from 12 to 15 dollars [225] a gang hour, depending on the location and depending on the operation.

Now, on this particular case of the 1045, I don't know what we used as our overhead gang cost, but it ranges between 12 and 15 dollars, and that is to take care of equipment, supervision, administration, and return on investment.

Now, to arrive at a cost per car, then you just divide the number of cars you are doing an hour into that gang cost, and you come out with less than a dollar a car, and this is the general practice of all stevedores.

By Mr. Madden:

Q. In other words, in this rate you certainly would not expect to be able to recover as much as a dollar a car for your profit? A. We would be very happy when the operation turns out so that we recover a dollar a car over our direct expenses.

Ellet G. Horsman—for Complainant—Direct

Q. Now, if sedans are assessed on a measurement ton for the mech fund purposes, do you know how much per car that amounts to? A. On a measurement basis?

Q. On a measurement basis.

Mr. Zimmerman: Isn't that in the record?

The Witness: I should know.

[226] Mr. Madden: I am sure it is, but I am—

The Witness: May I say approximately?

By Mr. Madden:

Q. Surely. A. \$2.75 to \$3.25. On sedans—

Q. Yes. A. —it is about \$2.70 or so.

Q. I will remind you it is probably somewhat less than that. A. \$2.40 maybe.

Q. In any event, it is between two and three dollars, you will say? A. Yes.

Q. And I think the record will bear this out. For the transporters— A. It would be more.

Q. It would be more? A. It would be up in the \$3 range.

Q. So that assessment alone is greatly in excess of anything you would hope to recover in the average rate that you were charging Volkswagen in 1961? A. We couldn't absorb that assessment.

Q. And I will repeat, then, since 1961 have you found any mechanization or work improvement method by which you could effect savings which would permit you to realize [227] savings, permit you to absorb this assessment? A. Our gang structure is approximately the same today as it was in '61. On the ship it is exactly the same. On the dock, as I say, we put men or take men off as we see fit, depending on where we are going to park the cars, but that is an operational problem which we have always had the right to do.

(Tr. 227, 229, 230)

147a

Ellet G. Horsman—for Complainant—Direct

Q. Do you handle any cargo in which the increased cost per gang hour is as greatly affected by the mech fund assessment as automobiles? A. Not in volume, I don't think.

* * *

[229] Q. Do you see the manifests of the members? A. I have seen them, but it is not a practice for us to have them in our office. It is a practice for the steamship company to break down the tonnage in his own office, giving the stevedoring company a certified copy of the tonnage based on the stevedoring contract that he may have.

Q. You in effect rely entirely upon the report that you receive from the steamship company in making the report to PMA, as to whether the cargo is reported on a weight or a measurement ton basis? A. Yes, sir.

Q. In performing your services aboard the vessel and on the docks, do you have any special equipment to handle Volkswagens? A. Yes.

Q. What is it? A. It is a patent bridle device that picks the car up from the hold or the 'tweendecks of the vessel to the dock. It protects the car and gives the car greater protection from damage, and it is a device that has improved to a certain extent the production.

Both Volkswagen manufacturers have manufactured this type of gear, and they furnish to their stevedores this equipment.

[230] Q. Do you purchase it? A. We purchase it.

Q. Is it your equipment? A. Yes.

Q. How long have you had this? A. I would say four years. There have been several changes in the period of four or five years, but we have had the present one about three or four years.

Q. Now, what about on the dock? What equipment do you use? A. We use what is referred to in the stevedoring business as a jitney. A jitney is a tractor with a model

Ellet G. Horsman—for Complainant—Direct

engine, and in front of the jitney we have a foam rubber pad which pushes the automobile from the hook where it was left to a storage point in our yard.

Q. How about in Long Beach? A. In Long Beach, we pull them. The longshoremen will not push them in Long Beach, but they pull them. In San Francisco they will not pull them, but they push them.

Q. Is there any special equipment needed for pulling them? A. Just a line to—

Q. Is there any special hook? A. You have to have a special hook not to damage the bumper, but it is something that can be fabricated in your [231] shop.

* * *

Q. What would you say was a typical capacity for autos of one of these modern automobile carriers which Volkswagen chartered? Do you have any idea of approximately the number of vehicles that such a vessel carries? A. We have had them up to 1300 cars per ship.

Q. Now, if we assume that the cargoes are roughly three-quarters sedans and one-quarter transporters, is there [232] any convenient way that you could estimate the number of measurement tons that that cargo would constitute? A. Let's round it off and say a thousand cars, and they measure, the average I think was placed at ten there in the Leader.

Q. Approximately 10,000 measurement tons? A. Yes.

Q. Now, assuming the average cost for discharging those vehicles during 1961 at \$10.45, the cargo handling costs would total approximately how much money there? A. About \$11,000, rounding it off again, it would be \$10,450, on the basis of units.

Q. Now, what would be the mech fund assessment on 10,000 measurement tons? A. What did we establish was the mech fund on a sedan? Was it \$2.40?

Ellet G. Horsman—for Complainant—Direct

Mr. Zimmerman: Well using the tonnage figures.

By Mr. Madden:

Q. Use the tonnage. The measurement tons, on 10,000 measurement tons. A. Times—

Q. 27½ cents. A. Yes, 27½ cents.

Q. That would be approximately \$2,750? A. Yes.

[233] Q. Which is readily computable as being an increase of the discharged cost of the fraction made by 2,750, divided by— A. Divided by 10.45.

* * *

The Witness: The mechanization fund of \$2,750 represents approximately 25 per cent of the total stevedoring costs on a thousand automobiles.

By Mr. Madden:

Q. On 10,000 measurement tons of cargo, can you estimate the average stevedoring and terminal costs other than automobiles?

* * *

The Witness: Can you name a particular commodity?

[234] *By Mr. Madden:*

Q. We will say cotton. A. Cotton?

* * *

Q. Can you compute what you would estimate to be an average cost of discharging 10,000 tons of baled cotton? A. Stevedoring and terminal, or just stevedoring?

* * *

Ellet G. Horsman—for Complainant—Direct

[235] The Witness: Yes.

By Mr. Madden:

Q. And how much do you estimate that to be? A. \$10 a ton, \$10 per 2,000 pounds.

Q. And the mech fund assessment on that 10,000 pounds at 27½ cents is the same, I take it, as 10,000 pounds of Volkswagen? A. Yes, it is assessed on a weight basis.

Q. Can you compute the percentage increase of the cost of discharge? A. It would be about three per cent, wouldn't it, 2.7?

* * *

Q. Mr. Horsman, you stated that you handled discharge, [236] unloading of cargoes for common carriers, and—
A. Contracts.

Q. And contracts? A. That is right.

Q. That is chartered vessels? A. That is right.

Q. Have you any idea about what the percentage between those two are? A. On what, sir?

Q. Between chartered vessels and common carriers.

A. For what type of cargo, all cargo?

Q. All cargo. A. Well, I can only speak for my firm.

Q. Yes. A. About 90 per cent of it is liner business or common carrier.

Q. In reference to cars, what percentage of it is Volkswagens? A. I would say that they represent about 90 per cent of the automobiles we handle.

* * *

[237] Q. To your knowledge, do you know of any movement of chartered cargo to the Pacific Coast that moves in greater volume than Volkswagen automobiles, excluding bulk carriage? A. If you apply it to a measurement basis, no.

Ellet G. Horsman—for Complainant—Direct

Q. How about number of ships? A. Could you ask that question again?

Q. How about the number of ships? A. No, the original question.

Q. The movement of chartered—

Examiner Theeman: Well, let's read it back, the original question, please.

(Record read.)

The Witness: I think that they are the largest.

I am only thinking of steel commodities that are moving in private vessels but, as I say, if you applied a measurement, no. Volkswagen is the largest, and in the number of vessels I would say that they are pretty much the largest contract [238] carrier here on the Pacific Coast.

By Mr. Madden:

Q. You have filed protests, have you not, with PMA, as to the impact of the measurement tonnage basis of assessment on vehicles? A. We have, and I believe that my letters or letters from my firm are part of the record.

Q. And in those letters, did you state to PMA whether or not it was possible for you to absorb the increased assessment?

* * *

A. Whether I wrote the letter or not, we couldn't absorb it, and whether I made myself clear in this letter to [239] Pacific Maritime Association, I don't know.

* * *

Q. Have you discussed the problem of the assessment on Volkswagen automobiles with other stevedoring companies who handle them on the Pacific Coast?

* * *

Mr. Zimmerman: Yes or no.

Ellet G. Horsman—for Complainant—Direct

The Witness: Yes.

By Mr. Madden:

Q. In any of these discussions, did any of them indicate that they thought it was possible to absorb the assessment within their operation? A. No.

* * *

Q. What other employer members of the PMA have you discussed this problem with? [240] A. Other members of the PMA?

Q. Yes. A. Quite a few. Namely, Mr. Peter Teige.

Q. I mean direct employer members, the contracting stevedore members, and the terminal operator members. A. We have discussed it at PMA meetings, the stevedores together have discussed this problem.

Q. Do you recall any particular time or place when it was discussed? A. In January 1961, at 16 California Street, and I don't know the date.

Q. Was that a meeting of the PMA? A. I believe there was a meeting of the PMA that month on the establishment of the formula or format to be used for the assessing of various cargoes at which time it was indicated that the assessment would be based on "as manifested"; then some weeks later Mr. Sayette clarified it, pointing out that automobiles, regardless of what they are freighted as, would be on a unit basis.

This gave us the opportunity to discuss with the other stevedores what they had done or what they were going to do, but I might point out these discussions took place during meetings at Pacific Maritime Association.

Q. It would be fair to say at least that there was uniform agreement that it would be impossible to absorb the [241] assessment among the contracting stevedores with whom you talked?

* * *

Ellet G. Horsman—for Complainant—Direct

Q. Was it the uniform opinion of the contracting stevedores with whom you talked that the assessment could not be absorbed by them? A. Yes, when placed on a measurement basis.

* * *

[242] Q. Are either of your companies members of any agreements which have been filed with the Maritime Commission? A. No, sir—let me reanswer that.

The stevedoring contractors of the Pacific Coast was formed last year with the approval of the Federal Maritime Commission.

Q. Is Marine Terminals Corporation still a member of the San Francisco Bay Carloading Conference? A. Yes, sir.

Q. That agreement was filed, wasn't it? A. Yes, sir, some years ago.

Q. And your Southern California company? A. Under the Southern California—

Q. Carloading tariff? A. Carloaders Association.

Q. Those agreements recite, do they not, that your companies are other persons subject to the Shipping Act? A. (No response.)

Q. Are you familiar— A. I am not familiar with them.

Q. But you are signatory parties to them? A. We are.

Q. And to this more recent— [243] A. This Association, yes.

Q. What is the purpose of this recent Association? A. So that stevedores with mutual problems can get together and talk about these mutual problems. It is something that we needed for many, many years.

Q. And that agreement has been— A. Filed with the FMC.

Q. Filed with the FMC? A. And approved.

* * *

Ellet G. Horsman—for Complainant—Cross

[244] Cross-examination by Mr. Zimmerman:

* * *

Q. Are most PMA assessments included in the commodity rate which you quote to Volkswagenwerk? A. The man-hour assessments are included in the per unit charge, yes.

Q. Are there any PMA assessments that are not included other than the mechanization fund assessments? A. No, sir.

[245] Q. After the mechanization fund went into effect, did you offer to establish a new commodity rate with Volkswagenwerk which would include the mechanization fund assessments? A. Yes.

Q. What was Volkswagenwerk's answer to that proposal? A. They didn't accept it.

Q. I would like you to look at Exhibit 9, a letter which you wrote to Mr. Saysette of March 9, 1961, and referring particularly to the fourth paragraph, did Volkswagenwerk advise you as to what they would do if you attempted to include the mechanization fund assessment in the commodity rates? A. Well, it says here—it answers it in paragraph 4.

Q. Yes. And what was their advise to you? A. They also have indicated, their agents, that if our rates are renegotiated and the assessments placed in the rate, they will continue to deduct the 27½ cents per measurement ton.

Q. Now, at this time had you offered to quote them a commodity rate which was more than the previous commodity rate in order to absorb the mechanization fund? A. If I remember—I don't know if I did it by letter [246] or verbally, but I informed Volkswagen that we could absorb the mechanization fund if it were placed on a weight basis. It made it less than 20 cents, if I am not mistaken.

Q. Twenty cents per auto? A. Yes.

Q. And you had advised them that you could absorb that much in your current commodity rate? A. We were ready to do it, yes.

Ellet G. Horsman—for Complainant—Cross

Q. Did you offer to quote them a new commodity rate which was greater than your old commodity rate and still absorb a part of the mechanization fund on a measurement ton basis? A. Yes, I submitted some rates based on the calculation that the 27½ cents would be assessed on a measurement ton. At the time we took the experience we had on the last year, and the rate was not the same as it was, plus the assessment. It was a new rate taking into consideration the past experience and the new mechanization fund assessment.

Q. And was that the proposed rate which Volkswagenwerk declined to accept? A. They declined to accept it on the basis that they would not pay the fund on a measurement basis.

Q. Subsequent to that refusal, did you continue to work Volkswagenwerk's cargo at the previous commodity rate?

A. Yes.

[247] Q. And was that rate subsequently renegotiated?
A. Yes.

Q. And was the rate increased or decreased? A. I believe it was decreased.

And has it been renegotiated since that time? A. Yes, it has. The procedure in most cases that all stevedoring rates are negotiated once a year, taking into consideration changes in wages, manhour assessments, and the units per hour in the case of Volkswagen.

This is a practice that is done throughout the industry in most cases.

Q. You have mentioned having discussions with other stevedores. In those discussions or at any time was there any agreement reached as to how each of the stevedores would handle the mechanization fund assessments? A. No.

Ellet G. Horsman—for Complainant—Cross

Examiner Theeman: Did any of the stevedores mention how they would handle the mechanization fund without having arrived at an agreement?

The Witness: It was all, "What are you going to do? What are you going to do?"

"Gee, I don't know."

Examiner Theeman: Did they answer all with this, "What are you going to do?"

The Witness: There was nothing concrete. I think [248] some of them indicated, "Well, we are going to have to charge them."

Let me for the record—we bill—

Examiner Theeman: Now, I am just talking about the conversations now.

The Witness: No, sir.

Examiner Theeman: When you say, "No, sir," you mean what?

The Witness: There was nothing concrete, I mean no specific answer that this is how we are going to bill it.

Examiner Theeman: Or how we are going to handle it?

The Witness: Handle it.

By Examiner Theeman:

Q. Do you remember the name of any of the particular stevedores you had the conversations with? A. Yes, they were all stevedores involved in this case. There was Mr. Ebby of California Stevedore & Ballast Company, Mr. Smith of Seattle Stevedoring Company, Mr. Whisnant of Brady-Hamilton Stevedoring Company, Portland, and I believe John Anthony of Associated Banning Company. This took place, as I say, again, during the meetings of PMA at PMA.

* * *

Ellet G. Horsman—for Complainant—Cross

[253] Q. Now, you mentioned handling Volkswagens for common carriers or liner services, as well as for Volkswagenwerk. Have the mechanization fund assessments on the autos which you discharged for common carriers been paid? A. Yes.

* * *

[254] *By Mr. Zimmerman:*

Q. You have indicated that you handle these autos both for common carriers and for Volkswagenwerk. Now, you have been assessed certain mechanization fund assessments in connection with the autos handled for common carriers. Have any part of those assessments been charged in any way against Volkswagenwerk? A. No.

Q. Have any part of the assessments in connection with handling autos for Volkswagenwerk been charged against the common carriers? A. No.

Mr. Zimmerman: I have no further questions.
Examiner Theeman: Mr. Ransom?

By Mr. Ransom:

Q. This gadget or device which you purchased from Volkswagen and started using about three or four years ago, I think you said, did it result in any savings in cost to you? A. Yes, in claims.

Q. In your Los Angeles operation, Mr. Horsman, did you since the mech fund went into being effect the elimination of some men from the dockside part of the stevedoring or terminal operation? A. Yes, I believe that we asked for the right to [255] change something that we should have done years ago. It is rather embarrassing to answer this question, because it was an oversight as far as the operations go.

Ellet G. Horsman—for Complainant—Cross

We wanted to operate the dock with men, depending upon the location of the cars, where they would be placed. In some cases we used more men on one ship and less the next, depending on the type of cars, the dealer arrangement, and I believe we asked the steering committee to give us approval to make changes on the docks down in Long Beach when we saw fit.

Yes, to answer your question. Yes, there has been.

Q. The net result was the approval of a change in work practice which eliminated some manhours of work? A. Yes. Again I say that this is something, Mr. Ransom, we always had a right to do, to request change in practices. I am afraid that we took advantage of it rather late.

Q. Would you not agree with me that perhaps rights of this sort are now granted more freely and with less turmoil, if granted at all, prior to the improvement fund? A. This was a very serious situation in Los Angeles and Long Beach area, which was the dockhands.

Examiner Theeman: Excuse me just a moment. Could we place this, so far as time is concerned?

Mr. Ransom: He has already testified that what I [256] am talking about was since the inception of the mechanization fund.

Examiner Theeman: I am sorry, I hadn't caught it. Continue.

The Witness: We had this right before. This was a type of change that could be made before.

By Mr. Ransom:

Q. But what I am suggesting to you is that it might have been a right which you considered you had before, but perhaps it might not have been so easy to exercise it prior to the fund. Would you agree to that? A. It might.

Ellet G. Horsman—for Complainant—Cross

Q. As a matter of fact, particularly in Los Angeles, whether by autos or otherwise, there has been some general improvement in the attitude of the workers as to changes, hasn't there? A. There has been a tremendous change in the operation of the docks in the Los Angeles-Long Beach area since the mechanization fund, especially in palletizing, car work, depalletizing, and work like that. We have accomplished much on that, yes.

Q. Has there been a general improvement since this mech fund in matters of work stoppages, let's say, work stoppages or wildcat strike, and things like that? A. Yes, sir.

[257] Q. And that redounds to the benefit of the entire industry? A. Yes.

Q. Has there been an improvement in such things as—I guess it is known as slowdown practices among the men? A. In isolated cases, we still have the problem, but the attitude of the regular longshoremen is that he works the best he can, and then as I say, in isolated cases, you also have that problem of either deliberate or a slowdown, or they don't occur as they have in the past.

Q. But in general, the attitude has improved since the mech fund? A. The attitude?

Q. Yes. A. Yes.

Q. Leaving automobiles aside for the moment, are there cargoes which have resulted in no productivity increase since the mech fund, and are there cargoes which have resulted in productivity increases both ways? Is that right? A. Yes, but in general the tons per hour have not changed.

Q. Then that doesn't change your answer to me that it is, "Yes," in some cases and "No" in others? A. I would say in general, since the mechanization fund, to be very honest with you, we have not seen an [258] increase in tons per hour. We are enjoying less work stoppages, but we could not increase production.

Ellet G. Horsman—for Complainant—Cross

Q. Have you ever handled Renaults? A. Yes, sir.

Q. Do you happen to know what the weight of a Renault is, and its measurement tonnage? A. It is approximately the same as a Volkswagen. Let's take the Dauphine.

Q. Yes. A. I think it measures about the same as a Volkswagen sedan, and it weighs—its weight is about comparable.

Q. What about Fiat? A. That would also run—Fiats, Renaults, and Volkswagens—about the same.

Q. Is the Renault an air-cooled engine? A. No, that is water-cooled.

Q. Would the fact that the Volkswagen is an air-cooled engine result in its being somewhat lighter? A. I don't know.

Examiner Theeman: Do you know that?

The Witness: I don't know.

By Mr. Ransom:

Q. Have you handled Fiats? A. Yes, sir.

Q. In your handling of Renaults and Fiats, have you
* * *

[260] Q. Whatever contracts have been made, have Volkswagen been aware that there has been as part of the costs that make up your bill, this measurement ton assessment for dues? A. I believe that they would be aware. It was a very extensive negotiation.

Q. Then you know there was? A. Yes.

Q. Have they complained about that one to you? A. Germany has a tendency to complain about all costs.

(Laughter.)

Q. They haven't refused, as they did with respect to this mech fund assessment, called it out? A. Franz Klaffs, when he was associated with [261] Volkswagenwerk, made

Ellet G. Horsman—for Complainant—Cross

it a point to ask the question to me why the cargo dues were placed on a measurement basis, rather than on a weight basis, and my answer was that I gave him a copy of Mr. Saysette's letter of September 1958, and I think this is what we have to do.

* * *

Q. In other words, it didn't get the same treatment as the mech fund? A. No, sir.

Q. By them? A. No, sir.

* * *

[262] Q. Do you recall a membership meeting in January 1961 when the program was voted on? A. What was the date of that?

Q. January 11, 1961. A. No, I was in the East. However, members of my firm were there.

Q. Do you happen to remember whether your firm voted yes or no on it? A. I don't remember, but I don't think there were any assenting votes.

Q. Pardon? A. I believe that we did vote for it.

Q. That you did vote for it? [263] A. I can't say, but I am pretty sure we did.

* * *

[264] Mr. Zimmerman: I found that I had skipped one technical question, and I can take it either before or after.

Examiner Theeman: Why don't you take it? It might affect Mr. Madden's questions.

By Mr. Zimmerman:

Q. Now, in connection with the manhour assessments for terminal services, has that assessment been paid by Marine Terminals in connection with the handling of Volkswagen autos? A. Yes.

Ellet G. Horsman—for Complainant—Redirect

Q. And that assessment is not in question in your litigation with Volkswagenwerk, is that right? A. I don't think so. I hope not.

(Laughter.)

Mr. Zimmerman: Thank you.

Examiner Theeman: Mr. Madden.

Redirect examination by Mr. Madden:

Q. Mr. Horsman, Mr. Zimmerman mentioned that the rates were renegotiated after this base period of 1961, and you said that it had been renegotiated at a lower rate. Has it been renegotiated again since that? A. Oh, yes, since Mr. Curtis has been a part of the Volkswagen organization, he negotiated after each change in wages the first Monday of June each year.

[265] Q. And has the rate been lower or raised? A. They are enjoying a lower rate than they were in 1961.

Q. Has there been any other change that has been changed in that rate, for example dead time? A. Oh, yes.

Q. You might explain briefly what the effect of that change in the dead time means. A. Because of the type of cargo, one commodity per vessel, we took the risk at one time of having dead time. Dead time is a period of time between when the operation is completed by the men until the time they are guaranteed. This can be a substantial amount of money, depending upon the circumstances or the mood of the men, and at one time we absorbed all the dead time.

Examiner Theeman: By guaranteed, you mean under the labor contract?

The Witness: Yes, sir. The recent negotiations, the principal's agent, Mr. Curtis, and Wolfsburg, agreed that we have a formula now for dead time

Peter Curtis—for Complainant—Direct

where our firm cannot be hurt as much now as it was in the past. They are willing to pay us for a certain percentage of the dead time. It is a formula, and it is a rather complicated formula, and I think it is a very fair approach to the dead time problem that we have in the industry.

* * *

[267] Q. When you mentioned the assessment for discharging Volkswagens from common carriers had been paid, those assessments, I take it, were paid by your firm to the PMA fund? A. Yes, and we collected.

Q. You collected it from whom? A. The steamship operator.

Q. The steamship operator? A. Yes, sir.

Q. You have no knowledge, then, whether the steamship operator collected it from Volkswagen or not, do you? A. No, I don't, but I believe that it hasn't, because one of the largest common carriers of Volkswagen told me on a common carrier basis that he could not pass that cost on to Volkswagen.

[268] Q. That was the owner's agent out here for the company? A. That was the owner's representative, speaking for the owner.

* * *

[272] Whereupon, PETER CURTIS was called as a witness by and on behalf of the Complainant and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Madden:

Q. Will you state your name. A. Peter Curtis, C-u-r-t-i-s.

Q. And what is your position? A. President, Automar, Inc., 260 California Street, San Francisco.

Q. Prior to your position with Automar, Inc., with whom were you associated? A. I was vice-president, Winchester Agencies, Inc., San Francisco.

Peter Curtis—for Complainant—Direct

Q. In your duties in these two positions, did you have an association or perform services for Volkswagenwerk AG? A. Yes, I brought to Winchester Agencies the agency representation of the vessel under charter by Volkswagen. I had an agency in San Pedro which handled the Volkswagen [273] charter ships before I joined Winchester. The Volkswagen extended that representation to my new employer when I joined them.

Q. Would you describe briefly what this service consists of? A. There are two functions. One is a husbanding agency function; that is to say rendering port agency services to the vessel or vessels themselves.

Q. All right. A. Secondly, commencing in August 1961, the representation was extended to that of Volkswagenwerk, called coordinating agent. In that capacity, the coordinating agent is supposed to assist Volkswagen in negotiating stevedore contracts, selection of stevedores, and terminal operators, liaison with the distributors of the automobiles. I think that is about it.

Q. Liaison with the distributors was for the purpose of delivery? A. Delivering the automobiles to the distributors.

Q. How are vessels brought to the Pacific Coast from Germany by Volkswagen? A. How are vehicles brought or vessels?

Q. Vehicles. A. Presently there are two methods. One is under berth term arrangements with common carriers. At the present [274] time that consists of berth terms arrangements with Hanseatic Vaasa Line, and with Wallenius Line. It is—it has in the past also included Fred Olson Line. The other method is under vessels under time charter by Volkswagen, under lump sum FIO single-voyage charters, and by vessels under contracts of afreightment for the consecutive voyages.

* * *

Peter Curtis—for Complainant—Direct

Q. In time charter and consecutive voyage, FIO type of arrangement, whose responsibility is it to obtain the discharge of a vessel? A. The charterer.

Q. And that would be Volkswagen? A. That is Volkswagenwerk.

Q. And your function in that connection is what? A. To assist Volkswagen in negotiating stevedoring contracts, to make recommendations to Volkswagen on stevedore contracts. When I say stevedore, I mean including [275] stevedore and terminal, and to cooperate with the stevedore terminal operator and, at the same time, supervise the stevedore terminal operator's performance.

* * *

[276] Q. Do you know how many chartered vessels per year come to the Pacific Coast during, say, 1961 and 1962? A. In 1962 we averaged approximately three and a half chartered vessels a month.

Q. How about 1961, was that more or less? A. There would have been fewer vessels in 1961.

Q. To your knowledge, are there any other charter vessels carrying cargo to the Pacific Coast, other than bulk carriers that move in as great a volume as Volkswagen? A. I know of no other dry cargo movement with charter vessels, bulk or otherwise, that is as large as Volkswagen's charter operation, from the point of view of total dead-weight tonnage of the vessels engaged, or in the number of vessels engaged.

Q. How are the vehicles that are shipped by Volkswagen [277] on these chartered vessels manifested? A. Per unit.

Q. Has that been the case as long as you have represented Volkswagen? A. Yes. I should point out, Mr. Madden, however, that when I say manifested, there is no freight shown on the charter ship manifests. Many of the charter ships are under a time charter. Many of the ships are under

Peter Curtis—for Complainant—Direct

a lump sum FIO. Volkswagen always manages to put as many cars aboard as they can squeeze in.

Q. The manifest that is prepared, does it show weight?
A. It always shows weight in kilos.

Q. Does it show measurement? A. There have been some cases, I would say generally isolated cases, where measurement has been shown as well as weight on the manifest. Many of the agents who perform the husbanding and documentation services at the loading port are agents handling many, many types of vessels, and in most liner trades both weight and measurement is shown on the manifest.

That is the reason why some of the manifests have shown weight and measurement for the cars.

* * *

[281] Q. Can you make a comparison of a typical charter shipment of Volkswagens with respect to their weight, as compared to their measurement? A. Yes.

Q. Will you do so? A. Mr. Herzfeld yesterday I believe when off the record referred to the egg-shape or egg type models of Volkswagens, which appeared in recent advertisements, and let me use that expression to describe the cars, which are smaller and are in silhouette perhaps somewhat similar to an egg, which would include the sedan, the sun roof sedan, the convertibles, and the Ghia coup, and then let us refer to the others as box-shaped vehicles, which will include all of those in the transporter category, including the pick-up truck.

The average weight of the egg-shaped vehicles is 1,643 pounds each. The short ton equivalent is 0.8, or eight-tenths of a weight ton. The cubic measurement of the egg-shaped vehicles averages 312 cubic feet, which converts to a measurement ton of 7.8.

The measurement as seen is almost ten times that of the weight. The box-shaped vehicles will average 2,193

Peter Curtis—for Complainant—Direct

pounds, or a short ton equivalent of 1.1 ton. The average [282] cubic of the box-shaped vehicles is 45 cubic feet, or a measurement ton equivalent of 11.4 measurement tons.

As it will be seen in the box-shaped vehicles, the measurement exceeds ten times its weight. In the charter ship movement during '62, and continuing now into '63, out of every four units my impression is that the distribution would be three units in the egg type, and one in the box type.

If we apply that three to one ratio, we come out to an average of the four units, each one would be 0.9 short tons in weight, and 8.7 measurement tons.

Q. From a study of your records on the cost of discharging these vehicles during 1962, can you state the average discharge production that was accomplished per gang hour? A. Well, let's put it this way, that Marine Terminals Corporation and Volkswagenwerk have agreed that they will consider that the stevedoring rate for the year beginning September 1962, and running for 12 months, will be based on 16.54 autos per gang hour at San Francisco, and 17.75 autos per gang hour at Long Beach, which we all considered to be the net discharging average for the 12 months ending December 1962, in the actual discharge of the Volkswagen charter vessels, exclusive of the dead time.

That would convert, assuming you had an equal number of cars, to the Los Angeles area and here, and it is [283] approximately, that would work out to an average of 17 autos per gang hour which, on the basis of the weights and measurements referred to previously, would work out to an average production per gang hour of Volkswagen autos of about 15.3 short tons per hour, and correspondingly to 148 measurement tons per gang hour.

Q. Now, what would be the average gang hour weight during a typical shift of eight hours? A. Assuming six hours straight time, two hours overtime to make up a normal eight-hour shift, the wages alone, exclusive of in-

Peter Curtis—for Complainant—Direct

surance, taxes, and any PMA assessments, would amount in San Francisco, for a typical Volkswagen auto gang, \$69.17 per gang hour, utilizing 18.75 men per gang; and at Long Beach \$76.72 per gang hour average wages, with 21 men per gang.

If again we assume, and it is reasonably close, that it is approximately 50 per cent Long Beach and 50 per cent San Francisco, the charter vessel average will be \$72.95 per gang hour for the California ports.

Examiner Theeman: Give me that figure again.

The Witness: \$72.95, Mr. Examiner.

On the basis of average production, that we previously talked about, in other words, 15.3 short tons of automobiles, or 148 measurement tons, on—those gang hour costs of \$72.95 in California ports versus 15.3 short tons [284] is the equivalent of \$4.76 per short ton average.

\$72.95 in wages versus 148 measurement tons would be the equivalent of 49 cents per measurement ton, if we applied the wages against measurement tons, emphasizing there that those are wages, no fringe assessments or insurance attachment or overhead.

By Mr. Madden:

Q. Now, if the mech fund assessments are added to these wages, what is the effect upon the comparative cost? A. It is just a question of dividing and multiplying the factors we have already had which, if you base your assessment on a measurement ton, the mech fund assessment would be 27½ cents versus wages of 49 cents per measurement ton.

In other words, the mech fund would represent a cost equal to 56 per cent of the basic wages. If applied to a

Peter Curtis—for Complainant—Direct

weight ton, however, the mech fund of 27½ cents per short ton and wages, as we said above, \$4.76 per short ton, the mech fund equals 5.8 per cent of the wages.

In other words, when the mech fund is applied on a measurement ton basis, speaking only of wages, now, the mech fund equals 56 per cent of the wages, and when it is on a weight ton assessment it equals 5.8 per cent of the wages.

* * *

[285] Q. Are you familiar with what the total payroll during 1962 was for the ILWU in San Francisco? A. Well, the Pacific Maritime Association put out an annual report for 1962 on April 15th, of which there is a graph which shows shoreside wages, California, Washington, Oregon, and it shows wages for 1962 in that category of \$103,953,362.

Q. Does the amount of the mech fund assessment appear in that report? A. I couldn't find it, but it did appear in the records under Exhibit 49.

Q. And how much was that? A. The mech fund collections from Exhibit 49 for 1962 amounted roughly to \$5,200,000.

Q. What percentage is that of the total wages paid to [286] longshoremen during '62? A. That would mean the mech fund collections for 1962 represent an average funding burden of about five per cent of the total wages paid. That is on all cargo, apparently.

* * *

[291] Q. Would you state who are presently discharging Volkswagens for Volkswagen under the charter? A. In Seattle it is Seattle Stevedore Company. In Portland it is Brady-Hamilton Stevedore Company; in San Francisco, Marine Terminals Corporation; in Long Beach, Marine Terminals Corporation of Los Angeles.

Q. Do you know if there are any additional companies who discharge Volkswagens for the liner companies? A. (No response.)

Peter Curtis—for Complainant—Cross

Q. Could you name the others? A. Not reliably. I know that California Stevedore & Ballast in San Francisco is doing the work for one of the common carriers, and Associated Banning in Long Beach is, or Los Angeles, is doing the work for another one of the common carriers.

* * *

Cross-examination by Mr. Ransom:

* * *

[301] Q. And you are aware in negotiating for Volkswagen that that has been included in one of the costs? A. Yes.

Q. And that has been since you first started in this operation? A. I wasn't aware of it when I first started in the operation. I found out about it after I got into it.

Q. Were you aware that the mech fund had undergone a change from 27½ cents a ton, relating to stevedores, to 24½ cents, and then a 15-cents per man hour for clerking? A. Yes.

Q. And the 15 cents per man hour for clerking has been included in the rate and payable? A. It is included in the rate in California and has been paid. In Oregon and Washington, it is billed separately, in addition to the commodity rate, and has never been contested by Volkswagen, and has been paid, in addition to the other commodity rates.

Q. It has been what? A. It has never been contested by Volkswagen, and has been paid in addition to the commodity rates.

Q. It has been paid? A. The reason being that our stevedoring order for Washington and Oregon provides that our super cargo checkers are not included within the commodity rate.

* * *

[304] Q. Has Volkswagen or you particularly made a study of the Matson operation in their auto transportation? A. I am familiar with their cage system, as they call it,

Peter Curtis—for Complainant—Cross

in general terms. That is all. It is our understanding it is working out quite well.

Q. Pardon? A. It is our understanding it is working out quite well.

Q. Has Volkswagen made any attempt, to your knowledge, to take advantage of the Matson operation, the Matson type operation, to improve its own methods of bringing cars in and discharging them? A. The newest vessels that move into the Volkswagen charter trade will come in in May, and they are going to be larger than we have had up to now, and they are an improvement over existing Volkswagen charter ship arrangements, rather than adopting what I call Matson's plan.

You have different elements involved. You have a very expensive per diem cost on American flag operations. Your per diem cost on European flag vessels will be less. Your investment in Matson type operations for modification of the vessel is probably greater than the investment made on the European auto carriers, but it is our impression that production per gang hour on the type of vessel that Volkswagen has had in its trade since 1961 is comparable with the new [305] innovation that Matson has, so there is really not any reason for Volkswagen to change.

Q. Have you obtained from Matson any figures as to how they have increased their production since the mech fund went in? A. We have not talked to Matson directly. We are always glad to listen.

Q. So would your new vessels call for a change in method of discharging? A. No, it would be the same.

Q. Volkswagen Company has not, then, attempted to follow a system of drive into a cage and drive off on the vessel? A. No, that is the system I thought you were talking about. No, we have not. The return haul of the vessels in the trade from Europe to the Pacific Coast is

Peter Curtis—for Complainant—Cross

different than ships in the trade from the Pacific Coast to Honolulu, and coming back from Honolulu, all of which enters into the picture of why you design a ship a certain way.

Q. You gave some figures on the number of man hours per Volkswagen currently. A. Yes.

Q. Do you have those figures? A. Was that me, or was that Mr. Horsman?

Q. I didn't hear you. [308] A. No, I don't have that.

Q. And the Pacific Coast-European Conference is from the United States? A. It is an eastbound tariff. Is that right?

Q. I am not sure whether I understood your testimony about when the M&M fund went in, and the offers and acceptances between you and Marine Terminals on their stevedores.

Do you disagree with what Mr. Horsman said on that subject this morning? A. To what subject are you referring of Mr. Horsman?

Q. I am referring to Mr. Horsman's statement that they proposed to you a rate after the mech fund went into effect which was more than the prior rate, but not more than by the amount of the mech fund assessment. A. Well, that would be one area where I think I might disagree just slightly, but I don't think that Mr. Horsman's proposal was even acknowledged by Volkswagen. Volkswagen has consistently said they considered the measurement ton assessment utterly unfair, and they have had nothing to do with it.

Examiner Theeman: Mr. Ransom, my notes indicate that when Mr. Curtis was referring to the testimony by Mr. Horsman that he was referring to the terms of the contract with Volkswagen rather than negotiations.

Peter Curtis—for Complainant—Cross

Mr. Ransom: Well, that is what I am really asking [309] him about. My notes show that he said that Marine Terminals was asking for an increase to cover the cost of the M&M fund, and I am trying to develop whether he disagrees with my understanding of Mr. Horsman's testimony when they asked for an increase to cover part of the cost of the M&M fund.

Examiner Theeman: All right, ask him now.

The Witness: There was one proposal of Marine Terminals made that had the effect that Marine Terminals was going to absorb a few pennies of the two dollars and some-odd assessment per car.

By Mr. Ransom:

Q. I see. A. And it is my recollection that Volkswagen did not answer that on the ground I stated.

Q. When you stated that the non-member stevedore that you consulted with on this, would that be the Oakland Dock & Warehouse Company, or something like that? A. They were one.

Q. And you stated they said they would come up with some alternative arrangement? A. Yes.

Q. Would you explain that a little clearer? A. We did not encourage them.

Q. Pardon? A. We did not encourage them with an alternative [310] proposal. The relationship with the stevedores has been a good one. The stevedores have done a good job, and we are hopeful that we will never have to make a change.

Q. Then it isn't your position that Volkswagens or automobiles are the only cargo which would pay more on a measurement ton assessment than on a weight ton assessment? A. I was interested in Mr. Horsman's testimony

Frederick F. Noonan—for Complainant—Direct

about the house trailer. I think that is an interesting example of another one of them.

I haven't thought independently of any others that would pay as big an increase.

Q. That wasn't my question. My question is, you don't contend that other cargo assessed on a measurement basis wouldn't pay more because they are assessed on a measurement basis than they would if they were assessed on a weight basis? A. I am sorry, I don't get that question.

Examiner Theeman: Will you repeat the question, please.

By Mr. Ransom:

Q. Maybe I can restate it. Any cargo that is assessed for the M&M fund on a measurement basis is going to be paying more than if it were assessed on a weight basis.

Examiner Theeman: Is that a statement or a question, Mr. Ransom?

* * *

[316] FREDERICK F. NOONAN was called as a witness by and on behalf of the Complainant and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Madden:

Q. Will you state your full name, please? A. My full name is Frederick F. Noonan, N-o-o-n-a-n, business address 310 Sansome Street, San Francisco. I am president of Waterman Corporation of California.

Q. Waterman Corporation of California represents Wallenius Lines? A. Yes, we are Pacific Coast agents for Wallenius Lines.

Frederick F. Noonan—for Complainant—Direct

[317].Q. Is Wallenius Lines a common carrier by Water? A. Yes, they are.

Q. Do they carry Volkswagens to the Pacific Coast? A. Yes, they do.

Q. Under what terms of carriage, what are the terms of the carriage when they carry Volkswagens? That is, are they berth terms? A. Yes.

Q. Or FIO? A. No, the ocean freight rate is a unit rate, and it is a berth term rate where the vessel pays for the loading and discharging.

Q. How are Volkswagens manifested by Wallenius Line? A. By unit as a rule.

Q. Do they indicate the weight on the manifest? A. I am not really certain. I believe the weight and cube are both indicated, but I would have to check that.

Q. The freight rate is per unit? A. Correct.

* * *

[318] Q. You are familiar, are you not, with the so-called mech fund assessment? A. Yes.

Q. Or M&M fund assessment? A. Yes.

Q. Since the inauguration of the mech fund assessment [319] in 1961, has your discharging stevedores included the cost of that assessment in their billing for discharge of Volkswagens? A. Yes, they have.

Q. In billing, that billing is to Wallenius Lines? A. In care of Waterman Corporation in California, yes.

Q. Has Wallenius Lines protested against the assessment? A. Yes. When the charge was initially assessed, it represented a substantial increase in the overall stevedoring and terminal charges, and not only did we protest but we refused to pay it for several months in the early part, I believe, of 1961.

* * *

Frederick F. Noonan—for Complainant—Cross

[320] Q. When you say a substantial increase, can you give an approximate percentage increase? A. Approximately 30 per cent.

* * *

Cross-examination by Mr. Zimmerman:

* * *

[322] Q. What is the freight rate that Wallenius Line charges for carrying each Volkswagen? A. Well, the freight rates vary, depending on the size of the car. They have a tariff, and I think the ocean freight [323] probably starts at 150 and go up, depending on the large Mercedes cars paying a higher freight rate.

Q. It is not a special rate for Volkswagens, it is a rate for any auto? A. Correct.

Q. And the rate depends— A. Each type and model of car has its own ocean freight rate.

Q. Each type of car has its own rate? A. Right.

Q. So there is a special rate for Volkswagens? A. Well, Volkswagen has several different sizes and shapes, as you are well aware.

Q. Yes. A. And each size has a different rate.

Q. I mean does the tariff have a rate for Volkswagens, or does it have a rate for different sizes of autos? A. No, Volkswagens are listed as an auto, as a Simca, British Ford—you name it—every car in Europe, we attempt to carry from Europe to the Pacific Coast.

Q. And every car is listed by make in the tariff? A. Make and model.

Q. Make and model? A. Yes.

Q. Does the tariff refer to the size of the car in [324] establishing the rate, or does it just refer to the model in establishing the rate? A. Well, the tariff on some pages shows the actual measurement of the car, and the ocean freight rate.

Frederick F. Noonan—for Complainant—Cross

Q. Aside from the tariff items covering Volkswagens, as particular autos, does Wallenius Lines have any separate contract with Volkswagen? A. Not that I am aware of. They may well have, but I have no direct knowledge of this.

Q. You mentioned an understanding with your stevedores as to refunding the assessments if this dispute were resolved. Is there any agreement in writing? A. No, this was entirely verbal.

Q. And you say that for the last approximately three months you have not paid the assessment, in any case? A. I believe on two vessels we made some temporary arrangements to pay these into an escrow agent locally.

* * *

[325] *By Mr. Ransom:*

Q. Mr. Noonan, your tariff as to cargo doesn't show the M&M fund as a separate assessment, does it? A. The tariff filing itself, you mean?

Q. Yes. A. No, nowhere in the tariff filing is the M&M assessment.

Q. Your tariff rate includes all discharging costs? A. The tariff is berth terms, correct. In other words, the carrier absorbs all discharging costs.

Q. Yes. The tariff was not amended at the time of the M&M fund or the mech fund assessment to give an increase in your price for autos, was it? A. Not that I am aware of, no.

Q. You said \$150 to a certain figure. Are you quoting from memory the freight rate on a Volkswagen of any kind from Europe, or were you just picking that figure out of the air? A. I don't know the exact figure, but I don't believe I am too far off.

Q. Well, does Wallenius Line belong to the inbound conference from Europe, or is it a non-conference carrier?

Paul St. Sure—for Pacific, Intervenor—Direct

A. They are an independent carrier. They do not belong to a conference.

Q. Do you happen to know what the conference rate is on a Volkswagen sedan from the port of loading to the West ***

[330] *By Examiner Theeman:*

* * *

Q. In early 1961, you protested and refused to pay the mech fund assessment. Do you know whether that was the same position taken by the other common carriers?

A. I am trying to recall exactly who was present at this meeting that we had with the PMA board of directors on this, and I feel certain that all or, let's say, many of the other common carriers engaged in the carriage of cars from Europe to the Pacific Coast were present there. All were present, or were represented by their stevedore contractor—let's put it that way—and it is my impression that they were all very unhappy about this sharp increase in the cost.

Q. This was in the nature of a protest meeting? A. Yes, it was a meeting held with the directors of the PMA in which the Volkswagen representatives presented [331] their views, and several of us also presented our views at that time.

* * *

[341] Whereupon, PAUL ST. SURE was called as a witness by and on behalf of the Pacific Maritime Association, Intervenor, and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Ransom:

Q. Mr. St. Sure, would you state your full name for the record, please, sir. A. Paul St. Sure.

Paul St. Sure—for Pacific, Intervenor—Direct

Q. What is your present position? A. Well, I am president of the Pacific Maritime Association, and I am also a member of a law firm, St. Sure, Moore & Corbett.

Q. How long have you been the president of the Pacific [342] Maritime Association? A. Since March of 1952.

Q. Will you describe your duties as president of the Pacific Maritime Association? A. Well, I am the principal executive officer of Pacific Maritime Association, which is an incorporated non-profit organization of employers engaged in operating steamships, operating as stevedores in the various ports on the Pacific Coast, and as terminal operators.

The membership includes approximately 150 companies, and my duties are to act as executives in supervising the operations of the various departments of PMA, and primarily, in addition to that, to act as labor negotiator for labor contracts between the members of the PMA and the various Maritime unions, and to supervise the administration of those contracts.

Q. What would you say was the principal function of PMA, as such? A. Well, the primary function of PMA is to negotiate and administer labor contracts with the offshore and onshore maritime unions affecting operations on the Pacific Coast under a unit defined by the Labor Board with regard to longshore functions, and under a master contract likewise certified by the Labor Board for a unit embracing all American flag vessels headquartered on this Coast.

[343] Q. Would you state whether the Pacific Maritime Association is a rate making group or rate making conference? A. No, we have no connection with and no responsibility for rate making. Indeed, our concern is merely the negotiation of wages, hours, and working conditions for the people within the units that I referred to.

Q. Does the PMA function through committees, through boards of directors? How does it operate? A. Well, we

Paul St. Sure—for Pacific, Intervenor—Direct

have—I will describe the staff structure of PMA first. There are probably 150 employees of Pacific Maritime Association. The organizational structure is a president—I am speaking of staff structure now—there are three vice-presidents, one a vice-president in charge of finance, Mr. Saysette, a vice-president in charge of labor relations, Mr. Goodenough, a vice-president-administration, Mr. Dellwig.

We have a director of offshore labor relations, manager of the contract data department, and an accident prevention bureau.

We have other staff members who attend such things as unemployment insurance claims. We likewise operate a central pay office for stevedores and terminal operators in each of the major ports. We have area officers with an area manager at each of the following port cities: Seattle, Washington; Portland, Oregon; San Francisco, California; and [344] Los Angeles-Long Beach, California.

They in turn have staff assistants.

The membership structure of PMA, as well as the corporate structure, provides for a board of directors and executive committee, and various standing committees such as one referred to as the Coast Steering Committee, as well as negotiating committees of operating people.

The number of operating people available who serve on the committees are reasonably few. Therefore, there is a good deal of interchange of responsibility from the point of view of the committee set-up, but the industry members do participate very actively in the day to day administration of the contracts, the administration of the functions of PMA, and in the actual negotiation of contracts with the various unions, though I am the official negotiator and the spokesman during these negotiations.

(Tr. 344-346)

181a

Paul St. Sure—for Pacific, Intervenor—Direct

Q. Is the steering committee involved in the labor negotiations? A. They are involved both in the negotiations of labor contracts, and also in the administration of the contracts on a day to day basis.

Q. What union represents the longshoremen and marine clerks? A. The International Longshoremen and Warehousemen's Union.

[345] Q. Is that certified by the NLRB to act for them? A. Following the 1934 so-called general strike, they were certified as representing the composite unit on the Pacific Coast, covering all longshore operations at all ports from the Canadian border to the Mexican border, and particularly certified as the bargaining representative of workers employed by Pacific Maritime Association members.

At that time, the membership was in an organization known as the Waterfront Employers of the Pacific Coast, which had subsequently merged into Pacific Maritime Association.

Q. And the Pacific Maritime Association, then, is an employers group that are bound together to negotiate with the various unions? A. It is an association of employers which is a pattern which exists on this coast in many industries, and the sole reason for the association, apart from the things that have branched out, such as accident prevention and other functions, but the primary reason for the organization existing is to bargain as the employer representative for this union.

Q. Do you represent through your law firm other employer groups in other industries? A. Yes, the pattern I mentioned of employer associations for bargaining purposes developed largely on this [346] coast, beginning in 1936. After the passage of the Wagner Act, and since 1936 my firm and I have actively and still actively participate in the negotiation of multiple employer negotiation contracts with the labor unions in the fruit and vegetable canning industry

Paul St. Sure—for Pacific, Intervenor—Direct

through an association known as the California Processors and Growers, which comprise about 80 per cent of the total fruit and vegetable pack in California, and in turn about 40 per cent of the national product.

Also, the Milk Product Manufacturers Association, a group of manufacturers of milk products such as condensed milk and dried milk cheese, butter, and other milk products, a similar association that has a contract for I would say 80 or 90 per cent of the employers in this field in California, all of the major advertised brands, and many farmer co-ops.

Here again these associations bargain on a unit basis usually after certification by the Labor Board of a master unit. Also, Retail Merchants Association of Alameda County, a group of retail department store operators who have similarly bargained on a group basis since 1936 or '7, and other groups, the Fluid Milk Distributors, in the entire Central Valley, and the metropolitan areas, and we have also represented other multi-employer groups in various other industries over a period of the last 30 years.

[347] Q. I think you have pretty well demonstrated that you are fairly well acquainted in the labor negotiation field. What I would like to ask you next is the process by which these other employer groups have bargained for wages, working conditions, fringe benefits, similar to or dissimilar to that which is undertaken by PMA. A. No, the pattern of bargaining or the method or technique of bargaining for a multi-employer group is much the same.

The groups really are based upon a common interest in that they are operating in the same area of either production or providing service. They are competitors from the standpoint of gaining business, and their price operations in that connection, but they have the community of interest that either voluntarily or by compulsion requires them to deal with the labor that they hire as a group.

I say some voluntarily and some under compulsion.

Paul St. Sure—for Pacific, Intervenor—Direct

Many of these associations came together as a voluntary act of the competing employers. I think PMA is one exception of this. I think it came together by government direction, and the members are actually required to negotiate and operate on a coastwide basis by reason of the Labor Board action on the composite unit for longshoremen, particularly even though the employers themselves historically preferred to negotiate at least on a port basis, but PMA, since the [348] mid-30's has been the type of multiple employer organization I have described.

Q. You are generally familiar, are you not, Mr. St. Sure, with the history of the ILWU and the labor negotiations and work practices on the West Coast? A. Yes, I am.

Q. Would you, as background to this mech fund plan, describe if you will the trend from, let's say, 1934 up to the late 1950's of the longshore work practices and the wage and benefit trends? A. Well, beginning with the maritime strike of 1934, which led to the coastwise unit and the initial ILWU contract, I have had familiarity with the operation because my first work in labor relations began in 1934 in connection with that strike and, although I did not become associated with Pacific Maritime Association until 1952, the fact that this is a maritime community required that during all of the period intervening between '34 and '52, that anyone in the field of labor relations maintain some familiarity with what went on on the waterfront, because it cut across the entire economy.

Beginning in 1934 until 1948, following a second maritime strike in 1936, which was a bitter strike, the relationship between the employer group on this coast of maritime labor relations and the ILWU was generally described [349] as a bad relationship.

Books have been written about it to describe the continuing pressures of the union to apply more and more restrictive work rules, both during negotiations and by a

Paul St. Sure—for Pacific, Intervenor—Direct

process of job action, slowdown, and this involves such things as the addition of men that were not required on the job, the limitation of sling load limits, and a large variety of work practices that resulted in a declining productivity in all ports on this coast.

In 1948, the further bitter strike occurred which had over a hundred days duration. It involved a Taft-Hartley injunction which did not operate as a cooling off period, but by the union's own description involved a heating up period, and when the Taft-Hartley injunction expired the strike was resumed and continued for a long period.

Now, this strike resulted from either philosophical or political difference, based on the theory that the Maritime would not do business with Communism. This was adopted by the ILWU that they would not permit their officers to take the oath under Taft-Hartley, and this became a strike issue.

Beginning with that period, and after this long strike, an attempt was made by the employer group to improve relationships as between the union and the employer group, and this developed into what was known as the "new look," [350] and when the strike finally was accomplished and settled, and the union had made very spectacular gains, both in the area of wages and the adoption of one of the first industry pension funds, there was a good deal of work done to endeavor to reverse the trend of constant work stoppages, work restrictions and slow-downs, and an attitude of extreme militancy on the part of the workers on the docks.

This didn't develop into much of a change and, indeed, during negotiations beginning 1952 when I was named president of the Pacific Maritime Association, we were continually trying to develop with the union some method of changing the attitude of the workers vis-a-vis the employers. We were also endeavoring to correct work practices by tightening up discipline, trying to avoid such

Paul St. Sure—for Pacific, Intervenor—Direct

practices as what the union refers to as "four on-four gone", where eight men are employed in the hold of the vessel, four of them report to work and work half the shift, and then the other four come on and work the other half, and all eight were paid for the total shift.

These were things outside the contract, but they were the type of conditions that had developed on this coast. One of the worst ports, by way of performance, was the Port of Los Angeles, but the other ports likewise suffered from these bad work practices.

Each year until 1957, and on two occasions, we [351] went to arbitration; the employers presented the picture of declining productivity, worsening work practices, work stoppages, many a day in each of the ports which were in violation of the contract but which were difficult to compensate for because of the peculiar rotary hiring method we have on this coast; by that I mean the men can stop work, but the work is still going to be there when they come back, and the only men available are men out of the hiring hall on a rotational basis, so the tendency was to press more and more for the union and for the employers to give more and more in the hope that they could get their cargoes out and the vessel unloaded.

Despite the fact that we presented this picture in arbitration, no correction came about, and each year we continued to add onto the wage cost and on top of a declining or worsening set of work practices and productivity.

Beginning in 1957, the reputation of Pacific Coast longshore operations, both by reason of bad productivity and high cost, had become so bad, both resulting in steamship lines going out of business in the intercoastal and coast-wise trade because of the cost and the availability of rail and truck competition, and this likewise developed into a very large shipper pressure to bring about or try to find some method of bringing about a correction, a change in

Paul St. Sure—for Pacific, Intervenor—Direct

trend, the reversal in attitude of the men towards the work, and towards [352] the employer.

We had many discussions with the officers of the International Union about this. They agreed that we had grounds for complaint. They likewise said that the responsibility was largely the responsibility of the industry to correct things which were outside the contract, but they likewise took the position that those things which we had agreed to by contract after all, even though we said that we were coerced into agreement, that we had made such an agreement, and we would have to live with it or buy it out.

Specifically, in 1957, I talked with Mr. Bridges, the president of the ILWU, and pointed out to him at that time that the pressure is on the employers, both stevedores and steamship companies, both foreign and American flag, by way of criticism from shippers, had become so great that whether he liked it or not, or whether I liked it or not, that we seemed to be heading for some kind of a showdown.

For example, we had a sling load limit in the contract which is unique on this coast covering various commodities, and the only exception to that sling load limit was what was referred to as a shipper's package load, which meant that if a unit of cargo was actually contained or strapped or put together by the shipper uptown, or some way from the dock, that load could go through even though it weighed not one ton, but two or three or four tons, the [353] sling load limit being essentially a one-ton limit, and the shippers, even though it was a greater cost to them to begin to unitize their cargo, were doing just that in order to escape the cost of handling on the dock, and the limitations by way of sling load and featherbedding, and other things that occurred on the docks.

We had such things as double handling. Any cargo that arrived at a dock, if it wasn't unitized, had to be taken

Paul St. Sure—for Pacific, Intervenor—Direct

off the pallet board or off the truck and rehandled two or three times before it got aboard the vessel.

As a result of these discussions, plus the fact that some of the steamship lines, notably Matson, who are a major link between the Hawaiian Islands and the Pacific Coast, and whose rates are regulated by Government agencies, found that they were being charged by the residents of the Island of having ruined the economy of Hawaii by reason of freight rates.

Matson began to experiment in new cargo handling methods, the conversion of vessels, the introduction in greater degree of so-called van or container handling of cargo, and van type movement of cargo had been attempted on this coast previously, but had been stopped by the unions, particularly the longshore union.

Notably, in the case of American Hawaiian Steamship and Luckenbach, both of which have since gone out of [354] business, and as a result of these pressures, plus the Matson determinations to try and improve the situation by introducing new methods and devices, it was evident that the union itself—that is, the workers on the docks—were stepping up their resistance to change which had been continuous over the years and, indeed, the threat was that if cargoes were to be containerized and brought to the docks that they would not be handled by longshoremen, or that they would be handled but double-handled as in the case of the East Coast unions in the same issues, claiming that if a container of cargo arrived at the dock, the longshoremen would unload it, check it, and load it back again before it would go aboard the ship.

As a result of these discussions in 1957—again discussions between Mr. Bridges and myself about a need for a change in the overall attitude of the men, of the operation, of the contract, of the removal of the restrictions and the reversal of the trend of vessel productivity—the Interna-

Paul St. Sure—for Pacific, Intervenor—Direct

tional Longshoremen and Warehousemen's Union called a coastwise caucus.

Q. May I interrupt first? A. Yes, sir.

Q. Did you and Mr. Bridges at that time get out sort of a joint statement of policy between you as to what your objectives might be? [355] A. That came later.

Q. That came later? A. It is my recollection. The ILWU operates in a rather unique fashion. They assert that they are, and I believe in fact that they are a rank and file type union. That is, the decisions are not made by the International officers and handed down. The decisions are made by delegates from the various unions elected for that purpose to authorize the International to take whatever action they have in mind.

This is not to say that the International officers don't endeavor to persuade or influence the results, but this is an actual method of operation.

Prior to this Portland caucus, the union, in each port appointed a committee to survey what was going on by way of mechanical change, what the union accomplished by way of revising it, what the shape of things to come might be by way of possible change in methods of operation by the introduction of machinery, and try to make an estimate of what there was at stake from the point of view of the longshoremen:

If they should give up their resistance to change, and their continued diminishing pattern of productivity, and should permit the trend to be reversed.

A document was presented to the caucus as a report [356] of what they called their port labor relations committee amendment. It was an objective analysis of what had been going on over the years, and it ended with the declaration of the International officers of the union that the union had two ways to go. One, they could continue what Mr. Bridges described as the guerrilla tactics which

(Tr. 356-357)

189a

Paul St. Sure—for Pacific, Intervenor—Direct

had been so successful over the years, or they could continue to limit and control productivity.

They could continue to fight the machine. They could continue to maintain restrictive work practices, and even add to them, but that he felt this was possible for a limited period of time only, and that while they believed they had the strength to do it, that it could lead or would lead ultimately to a complete showdown which could mean a disastrous strike, both to the industry and to the men that worked in the industry.

The second alternative was to bargain with the employers for a change in conditions, for a reversal of the trend, for the elimination of restrictive work practices, sling load limits, double handling, gang sizes, to permit the introduction of machines and methods that would be different and meant to permit an efficient operation without the employment of the men, and over employment of the men, or without the featherbedding or contractual restrictions. The caucus authorized the International officers to explore [357] the latter alternative, that is, the alternative on endeavoring to bring out a new basic contract with the elimination of the items the employers were complaining about in the total industry, provided the employers would agree to two things or two categories of things.

One, that the employers would agree that in the event they could get an efficient operation by bringing out the changes they desired and thereby there was a saving of wage cost in manhours, that the employers would share with the union members the savings that would result.

The second condition was that if the employers were to agree to this principle in bargaining on this basis, that the ultimate bargaining would have to provide that any changes which would bring about greater efficiencies would not result in unsafe working conditions nor result in a speed-up of the individual worker.

Paul St. Sure—for Pacific, Intervenor—Direct

In other words, they were willing to talk about having the job made easier, though this might lead to increased productivity, their position being that their concern was not with productivity. Their concern was with working conditions, and if we could accomplish the productivity that was our business, but that we would have to pay a price for it, and that the price would have to be with certain safeguards with regard to the individuals.

With that authorization, the union officials met [358] with our negotiating committee because we were coming into a period then where the contract was about to expire. This was the first time in about ten years, because the contract up to that time had been allowed to be extended over each period of termination, so that we had a continuing relationship with arbitration in the event of dispute.

When we met with the union with this negotiation approach, and the union outlined to us their point of view and the proceedings they had had, and by way of digression they sent us a complete copy of the proceedings, so there was no secret about what the discussions had been or what the recommendations had been or what the proposals were that they intended to make to us; and following this preliminary meeting with the union it was my responsibility to negotiate, if you please, with the members of PMA, that is, the stevedores, the terminal operators and the steamship companies, as to whether or not they would be willing to negotiate a new type of labor bargain whereby the employers would concede that they would buy out the bad practices both under the contract and outside the contract for a price, whether they would gamble that the improvement that could result by greater efficiency and productivity on the docks would pay off as a labor bargain.

I can assure you there was considerable difficulty in convincing the employer group that this was the proper [359] procedure for bargaining. It was rather untraditional. The arguments were obviously, we believe that

Paul St. Sure—for Pacific, Intervenor—Direct

we should pay a price for these changes, and the union agrees that we may make them. Our past record and the union's past record indicates that we would probably not have a delivery of the things that were promised.

However, by a series of rationalizations primarily based on the idea that, after all, we had been paying good money for bad performance of the years, that it might be worth while to take a look at paying the same money for a better performance and gamble on it, that we couldn't be any worse off, and with this ultimate decision by the steamship operators, including the foreign lines and the stevedores and the American flag group, I was authorized to advise the union that they wanted to bargain with them for a completely new type of labor contract, that we wanted to bargain with them for a contract which would wipe out the restrictive practices of the past, even the history that led to them, a contract which would allow us to operate efficiently without unnecessary manning and, in turn, for this type of negotiation, a contract, if we could reach it, that we were prepared in some fashion to share with them as employers in the industry a portion of the savings that would result to us if we could improve our operation and increase our productivity.

[360] Neither of us at that time, and the history that follows will illustrate this, had any specific notion of just how you would go about this thing, how you would accomplish it by way of contract change, and what the price would be that you would pay for it, and the measure of that price in relation to the industry.

It was about at this juncture, in order to clarify in some measure the new areas that we were about to invade, that this document that you are now referring to was prepared.

Q. This is a document which hasn't been admitted in evidence, and it is one of the few, I guess.

(Tr. 360-361)

192a

Paul St. Sure—for Pacific, Intervenor—Direct

(Laughter.)

Mr. Ransom: Do you want to follow your practice of finding out if there is any objection?

Examiner Theeman: Let's go off the record.

(Discussion off the record.)

Examiner Theeman: On the record.

The Witness: Following the events I have described, it was specifically agreed with the ILWU and the PMA negotiating committee that we would carry on unofficial discussions to the end that we might arrive at a new type of contract, and because we were, neither of us, prepared to come to grips with the details of the situation, PMA prepared a draft document which outlined the understanding [361] as to the nature of the discussions and some of the background history, the references that we have talked about, such things as mechanization and automation, containerization, but that we were actually talking about something much broader than this, that we were talking about changes of traditional method of cargo handling with or without mechanization, but merely the change of bad practices in connection with normal cargo operations.

Then we endeavored to state, as the document indicates, the specific objectives that each side had in mind to achieve, and the things that the union in turn would want by way of guarantee on its side in the event that it agreed to the employer's objectives being accomplished.

This document that has been presented here as it indicates is the ILWU redraft of the document that we presented to them and, as I recall, the only changes that were made in the document were by the ILWU, and were minor changes in the listed objectives of the union.

Paul St. Sure—for Pacific, Intervenor—Direct

We had no objection to the changes that they made, and this then became, though not signed, a part of the negotiating record before that period, and was the beginning of the long bargaining which continued from that time forward until we were able to conclude as we bargained on the subject of what is now referred to as mechanization and modernization on the 18th of October, 1960.

[362] Examiner Theeman: Excuse me just a moment. Without objection, the document just referred to as the ILWU redraft is admitted in evidence as Exhibit 54.

(The document above referred to was marked Exhibit No. 54 and was received in evidence.)

By Mr. Ransom:

Q. This document didn't call for any payment of money at that point? A. It did not. This, as I indicated, was simply to outline the philosophical areas that we were about to discuss and the practical things that we hoped to accomplish and, as you will note in the first paragraph, both sides agreed at this stage that this was an unofficial discussion.

Q. Would you then state when the first fund was established in connection with this program, and how much it was, and how it was established, and what was it supposed to accomplish? A. Well, I am trying to keep my years straight now. In 1959, we first established an arbitrary fund, an arbitrary amount of money, to the extent of a million and a half dollars, which was in effect a payment of earnest money.

Examiner Theeman: Did you say earnest money?

Mr. Ransom: Yes, sir.

Paul St. Sure—for Pacific, Intervenor—Direct

The Witness: Earnest money—to demonstrate to [363] the union that we were not just talking but seriously intended to reach a conclusion with them if we could find the method of doing it.

Prior to that time, prior to the 1959 agreement on this basis, and during the previous year, during 1958 discussions, we had talked at considerable length about wanting to pursue this idea, wanting to reach an agreement. We had undertaken abortively a number of attempts to establish various methods of measurement of productivity in the industry without success.

We were pretty much floundering for a way to reach an agreement. At the same time, changes were taking place in the industry, and the union was tightening up more and more in objection to these changes particularly, and again referring to the Matson operation where the union took the position that where containers were now beginning to move over the docks in number, that these containers, themselves amounted to a violation of the longshore agreement in that, one, they were either the farming out or subcontracting of longshoremen's work in that other people were loading the containers away from the docks; secondly, that if it was not a farming out of their work which was forbidden by the contract, that it was an attempt by the employer to evade the sling load limits; that is, the same cargo which otherwise would be subject to restrictions were being placed in [364] containers away from the dock, that this was not a true shipper's package load and, therefore, this was an evasion of the contract.

Other resistance had occurred in the past with regard to changes of the method of operation, for

(Tr. 364-365)

195a

Paul St. Sure—for Pacific, Intervenor—Direct

example in the case of packaged lumber where a strike had stopped that operation, and where the union had gained a specific penalty pay of a dollar an hour permitting the employer to utilize the method that he wanted to use in handling cargo, and generally the pressures were tightening up day by day, by way of continued resistance on the part of the union to any contemplated changes, whether they were permitted by the contract or whether they weren't.

So when we came into the period of negotiation in 1959, and we in effect said to the union that we are still trying to devise a method of accomplishing these things, we are still trying to find a method of compensating you for the things we want back, they said in effect, that is fine. We have heard that conversation now for the last two years. Now it is about time for somebody to give us something more than conversation if you want us to permit you to even experiment in these areas.

And at that point we reached the conclusion that employers frequently are faced with, we might have to put some money on the line to be able to even continue [365] discussions.

I can recall that when I faced the employer group or negotiating committee and board of directors with this dilemma and told them that I thought that we should make some type of down payment, even though we had no formula yet devised for contract change, I was told that I was proposing that we bribe the union to permit the employer to do the kind of a job he was entitled to do, and I remember reporting this to the union negotiating committee, and I can recall Mr. Bridges' response saying, "Call it what you want. We don't mind. We are not thinskinned. So it is a bribe. But if you want to get the changes

(Tr. 365-366)

196a

Paul St. Sure—for Pacific, Intervenor—Direct

that you are asking for, if you are going to take back from the men the things that they have achieved, whether up your spine or not, you are going to pay for it."

So it was on that ground or in that area that we decided that there was enough possibility in the ultimate total bargain to justify the payment of, as I say, earnest money or the demonstration of our sincerity which can usually be measured in business in dollars by making a substantial down payment.

By Mr. Ransom:

Q. Mr. St. Sure, at that time, in 1959, when that was made, was the contract open? Were you also negotiating wages and increases in wages, fringe benefits, welfare plans, or [366] were you only talking about this? A. No, by this time this was a part of the total review; I mean at the annual period under our contract the union gives notice of its demands, and the employer in turn gives notice of his demands, if he has any, and the employers under normal conditions, except for the period of expired contract, as there was I believe in '58, where the contract continues, the review is during the course of the contract.

Negotiations go on for a period of 15 days. In the event there is no agreement reached at the end of 15 days, automatically all issues go into arbitration, and the arbitrator is required to make his decision within 15 days thereafter by a specified date to avoid the problem of retroactivity in this complicated industry, so we were at a period in 1959 of a general contract review, and one of the specific items for review was the question of mechanization, automation, what have you, plus wages, plus fringe demands, plus welfare, plus everything else, so it was part in 1959 of the total negotiation.

Paul St. Sure—for Pacific, Intervenor—Direct

It was merely one item of a list that the union presented. We resolved that item by putting it aside in the sense that we did not reach a definitive agreement as to contract change. We did, however, propose to the union in our first offer that we would make a payment into a [367] jointly trusteeed fund of \$1 million, in return for which the union would, one, concede that we were in good faith in pursuing our negotiations in this area in the future; two, that they would agree that this would be a payment for whatever changes had occurred up to that time, so that we wouldn't have to be reaching back to price out earlier changes, some of which had occurred already, and, third, that we would be allowed to continue experimentation provided that we would in effect freeze all of the existing bad practices, at least for the period of the year, that we would not seek to undo some of the things that we said we ultimately wanted to buy out.

I can remember when the million-dollar figure was presented, Mr. Bridges, who was the sole spokesman for his negotiating committee, which is an elected committee, inquired of me, "Where did you get the million dollars?"

And I told him that it had no relation to any measurement of saving or any formula that we had been able to devise, but that we did believe that the pressure from the unions who reversed the whole trend again, and to repudiate the possibility of future agreement, required us to make some demonstration of our good faith, and we felt that this could only be done by naming a substantial sum of money, but inasmuch as we had a payroll of \$125 million for long-shore operations on the coast, the million dollars sounded to us [368] to be a substantial sum. It was a nice round set of figures, and that this is where we got the million dollars.

He said that they would consider it and would meet with us the following day, I believe, and when we met the following day he said, "Our price is a million and a half."

Paul St. Sure—for Pacific, Intervenor—Direct

I said, "Where did you get the million and a half?"
And he said, "The same place you got the million."
So that is how we arrived at the figure of the 1959 fund.

(Laughter.)

Mr. Ransom: It is 12:15.

Examiner Theeman: Is this a good time for you to break?

Mr. Ransom: Yes, sir.

Examiner Theeman: We will recess until 2:00 o'clock.

(Whereupon, at 12:15 o'clock p.m., a recess was taken until 2:00 o'clock p.m., the same day.)

[369] Afternoon Session 2:00 p.m.

Examiner Theeman: On the record.

Would you read back the last couple of sentences, please.

(Record read.)

Whereupon, PAUL ST. SURE resumed the stand and, having been previously duly sworn, was examined and testified further as follows:

Direct examination by Mr. Ransom: (Resumed.)

Q. Mr. St. Sure, that million and a half was in the June 1959 negotiations period, wasn't it? A. That is right.

Q. And I think you stated this morning that agreement had been reached in '58, and in '59 it was merely a matter

Paul St. Sure—for Pacific, Intervenor—Direct

of arbitration. Do you wish to make any correction of that statement? A. Yes, I think that I was confused as to the sequence of years. The '58-'59 situation—actually, the contract which would have expired as of June '59, actually we were negotiating in '59 against the possibility of strike for the first time in a good many years because we had previously had this practice of extending the contract always a year or [370] two beyond the actual expiration date.

Q. Was the matter of the million and a half an issue which involved the possibility of a strike? A. It involved the possibility of a strike in either one of two areas, either that we would be paying more money with no chance of improving the contract conditions under the union pressure to not only continue, but expand these resistances, or if we insisted that there be some improvement in the contract by way of removing restrictions and bad practices without having paid a price for it, I am sure that we would have gotten a strike in either area.

Q. Was there a memorandum of understanding resulting from the June '59 negotiations? A. Yes, there was.

Q. I will ask you if you can identify Exhibit 1-A as being that memorandum of understanding. A. Yes, sir.

Q. Did that call for a review, then, in 1960 of wages, mech fund, and welfare plans, and what-not? A. Yes. In addition to avoiding the strike possibility and arriving at the quid pro quo, I mentioned about the buying out the past changes, and freezing the restrictions for the period until the next negotiation, we were able to buy a three-year contract at that time, that was extending the period of the contract over the period of the [371] next three years with the usual provision for the review on the anniversary date in June, and one of the things that was then subject to review was specifically the matter of wages and, of course, the mech fund or mechanization, and the other issues that were subject to review under the memorandum that we signed at that time.

Paul St. Sure—for Pacific, Intervenor—Direct

Q. Then you attempted again in 1960 to work out if possible some arrangement which ultimately resulted in the present modernization and mechanization fund plan, is that right? A. That is correct. My recollection is that the union presented four issues for review in 1960: wages, I am sure, mechanization fund, I am sure, and either welfare or pensions, but there were other issues, but the principal ones were the issues of wages and so-called mechanization program.

Q. Did you actually reach an agreement by June 15th then, of 1960, on all of those matters? A. No, we did not.

Q. What happened? A. At the beginning of the negotiating period—and I stated this morning by contract we were now in a three-year term with the usual provision for review and arbitration which permitted 15 days of negotiation, and then the automatic reference to arbitration, and when the meetings first began that year, the ILWU took the position that they [372] assumed that they were not ready to bargain to a conclusion to the mechanization issue, and I may say parenthetically that during the period of the year that intervened we had continuing informal discussions with the ILWU.

They knew that we were probing for productivity measurements, and that we were having problems within our own group, so the suggestion that was made by Bridges at that time was that, inasmuch as we were not ready to proceed, the union was prepared to set aside the mechanization issue for another year and bargain only on the remaining issues of wages and other fringes provided we would pay this year \$3 million, and again the colloquy of where did you get the three; well, it is just twice one and a half—(laughter)—and we told them that we were not prepared again to pay a sum of money arbitrarily, and we were prepared to negotiate the problem of the mechanization fund and the contract changes during the

Paul St. Sure—for Pacific, Intervenor—Direct

then pending negotiation, and that we would not pay any further arbitrary fund really for the purpose of buying time.

We then proceeded to negotiate or attempt to. Both sides realized that there were many detailed items of discussion to be worked out that could not be worked out in a period of 15 days.

Candidly, neither side wanted to risk going to an arbitrator for this determination of this issue that was [373] so complicated that we couldn't develop it, much less leave it in the hands of a third party.

So, in effect, we stopped the clock as against the automatic provision for going to arbitration and continued to negotiate until finally an agreement was reached on the 18th of October.

Q. And that agreement was that which is set forth in this memorandum agreement of Exhibit 1-B, is it? A. That is correct.

Q. And roughly, very briefly, what does that agreement consist of as to the wages, welfare, mech fund, the broad outline? A. The basic wage adjustment, as I recall, was eight cents an hour. There was a formula based on passed negotiation that relates that eight cents an hour which is eight cents on a six-hour straight-time day, to a greater sum for clerks who work on an eight-hour straight-time day.

I think that figure was ten and a half cents an hour, to equate with the eight cents an hour. In other words, this is an internal formula. The two normal straight time days, which are artificial to be sure, also do bear a relationship in take-home pay, so this adjustment was paid in wages.

There was likewise an adjustment made in the welfare, I believe, by increasing the contributions to the [374] welfare fund, and there was a detailed agreement with regard

Paul St. Sure—for Pacific, Intervenor—Direct

to so-called modernization and mechanization fund, or work practice fund, and it had a variety of names during the negotiation.

Q. Was this all one package, then, these various items? A. Yes, these issues were all issues in the single negotiation and were all part of the review that was conducted at that time.

Q. During the course of negotiations, was any consideration given to—instead of creating a fund, simply giving an additional wage increase which would buy what the mech fund was to buy? A. Well, there was consideration given to it, both from the point of view of the employer's philosophy of this, all added up to a wage cost package in whatever form it was ultimately agreed to. The union, however, took the position during the course of these negotiations that, inasmuch as we were interested in buying out work restrictions, this could not be done on the basis of a mere wage increase.

I recall specifically that Bridges made the statement with regard to the sling load limit alone, that if we wanted to offer a dollar an hour we couldn't buy out that restriction on the basis of a wage increase. It would have to be done in some other form. It would have to be done in [375] the form of providing a protection against the loss of work opportunity which they believed and which we wished would result from the revision of the agreement.

Q. If instead of five million per year that would be converted into a wage increase, have you any idea what that would amount to? A. At a dollar an hour, it would have amounted to \$25 million on that one item alone.

Q. My question related to the five million that was finally agreed to. If that had been converted into a wage increase, how much of a wage increase would that have been? A. Eighteen, 19 cents an hour, possibly.

Q. In addition to the eight cents? A. Yes, sir.

Paul St. Sure—for Pacific, Intervenor—Direct

Q. Will you state what in your opinion the mech fund then did buy for the employers? A. Well, I think the simplest statement is the language now contained in the contract itself, as well as in the memorandum upon which it is based, that the employer would be entitled to operate efficiently, that he could change method of work, he could utilize labor saving devices, and that he need not be required or expected to employ unnecessary men.

Now, this specifically meant, by way of change, if I may singleout one individual item of restriction, it meant the elimination first of a practice known as multiple [376] handling of cargo in many ports.

It meant the elimination of the sling load limit that had been imposed upon non-listed cargoes by job action. It meant the elimination of the sling load limit, as such, in situations where either men or machines were added to move the larger loads. It meant the elimination of frozen manning in various operations.

For example, as the change had come in years past from handling grain or sugar in sacks to so-called bulk operations, the machinery had been added and, whereas no more than two or three men would be required to manage the operation of loading bulk sugar, we were still settled with 20 or 30 men, the same number of men that used to handle the sugar or grain when it was in sacks.

It meant that we could eliminate that type of feather-bedding, and I can cite many other examples of a similar nature.

It meant that in any operation that we could introduce that the employer would be the judge of how many men were to be placed on the job. In the opposite situation, where an existing operation was unchanged, we had the right to request a reduction; in the event the union agreed the reduction was made. In the event the union disagreed we went to arbitration.

Paul St. Sure—for Pacific, Intervenor—Direct

In the reverse situation of the new operation, the [377] union had the opposite right. If they challenged our number of men, they had the right to appeal and go to arbitration, but we could initiate the number of men in the new operation. It means that wherever there were restrictive provisions in the contract, they were no longer frozen. It meant that a specific procedure was devised for the correction of any restrictive existing measures, any excess manning, and essentially that we could operate efficiently without featherbedding on the job and without work restrictions.

Q. Did it include the opportunity for technological advances in the industry which did not exist before? A. Yes. As I say, specifically, in addition to the removal of work restrictions and featherbedding, as such, I should say in this industry the term is not featherbedding. They are referred to as "witnesses." (Laughter.)

And it did mean the removal of witnesses in those operations where they existed.

With regard to new methods, the introduction of machinery, as distinguished from a normal or traditional operation, conventional operation of handling cargo, it meant that we had the right and specific agreement that we could introduce new devices, new machines, new types of vessels, whatever, in this area that we might contrive without union resistance and indeed with the right to determine initially on the employer's side how many men should be [378] required to operate such a new device or new operation.

This did result and has resulted in some rather dramatic changes in operation on this coast which have come to us automatically.

Q. Did you also buy the right to continue any improvements that had resulted since the 1957 memo? A. That is correct; changes that had taken place, for example, in the packaged lumber operation which had been subject to chal-

Paul St. Sure—for Pacific, Intervenor—Direct

lenge were both bought out, one by the million and a half dollars, combining down payment, and this was reaffirmed in the ultimate agreement on October 18th, 1960, that these changes that had occurred were no longer and could no longer be claimed as a violation of any part of the old agreement or the new agreement by the union and, in effect, were bought out.

Q. Did the contract terms change at this time when you completed your agreement in October of 1960? A. Yes, very definitely this was tied in to part of the total bargain. Up to this time, we had never had a contract for a longer term than three years. The ultimate bargain on the mechanization fund or modernization fund by its specific terms extended over a period of five or five and a half years.

We insisted that, since this was part of the total bargaining package, and since it was an issue in the [379] contractual discussion that it had to be a part of, and of the same term as the bargaining agreement of which it was a part, and that the contract basically, therefore, should run for the same term of the years that the period of the mech fund was to cover, and indeed the extra six months was tacked on because there was another expiration date of a pension program which had been separate from the contract by way of separate agreement, and so as a part of the ultimate deal on the 18th of October, the basic contract, including the mechanization program, was tied down for a period until 1966, extending over a period of more than five years, which was a part of the bargain, also.

Q. And during that five years, the union's right to strike would be by reason of the extended contract restricted, is that right? A. That is correct.

Q. Did the agreement require—that was reached in October—did that require ratification, then, by the union and by the PMA? A. It did.

Paul St. Sure—for Pacific, Intervenor—Direct

Q. And it was ratified by the PMA when? A. Early in January of 1961.

Q. Under that plan, as finally negotiated, who was it that was to determine the method of collecting the five million per year? [380] A. Well, PMA during the negotiations insisted that PMA would have to determine the method of collection, although this was a subject of negotiation during the course of the negotiating period.

Q. Were the negotiations on the issue—

Examiner Theeman: Is this the interpretation of Mr. St. Sure on the agreement, or is this what the agreement was, because I am sure the contract will speak for itself, Mr. Ransom.

Mr. Ransom: I am not sure I understand.

Examiner Theeman: What is the purport of your questions now to Mr. St. Sure?

Mr. Ransom: The purport of my question now was simply what was the result of the negotiations, and I think he answered.

The Witness: Well, I think—

Mr. Ransom: Excuse me, Mr. St. Sure.

The Witness: Pardon.

By Mr. Ransom:

Q. I think you did answer that, and my next question to you is, to what extent was the matter of the determination as to who was to pay the fund and how it was to be arrived at, to what extent was that part of the negotiations with the union? A. It was a definite part of the negotiations in that [381] the union took a position with regard to the method of collection. PMA took a position with regard to the method of collection. There were discussions with the union during negotiation as to the problems that had been

Paul St. Sure—for Pacific, Intervenor—Direct

presented by the method of collection used with relation to the million dollars and a half.

We discussed with the union the differences of opinion among our own members as to the equitable method of providing for the collection of this money.

We ended up with an agreement by the union that, inasmuch as the employer members of the bargaining unit had committed themselves specifically to the payment of the sum, that whereas they were interested in the assurance that the sum would be collected, they would allow us to work out among ourselves the method of actual collection within the membership of PMA.

Q. For example, was a productivity method discussed in your negotiations? Was a tonnage method discussed? Was a wage and hour method? Were these various methods discussed in these negotiations with the union? A. Yes, sir. If I may go back a little, the initial million dollars and a half was a commitment by the PMA members to pay that amount of money to the union, and at that time the union had definite ideas of how it proposed to spend it, which they later changed.

[382] That money was collected on a manhour basis, and because the question was raised within PMA membership as to the validity of this approach, the position was taken by many of our members, including those who said they didn't contemplate mechanizing, that this was in the reverse position, and actually that there should be a relationship as between any fund that might be in the future contemplated, and the actual saving of manhours that might result to an individual employer.

Our first discussions with the union during the 1960 period were on the basis of attempting to arrive at a formula which would measure productivity as such and would relate savings or relate payments to manhours saved.

Paul St. Sure—for Pacific, Intervenor—Direct

We had done a good deal of experimentation, and investigation, and study in this area, and from our own point of view as employer had rejected this approach on two grounds at least. The most practical reason for rejecting it was that it was found rather quickly to be an attempt to measure operation by operation productivity on a particular type of cargo or operation, so complicated by such things as weather, type of vessel, type of pier, congestion in the area, a particular crew that might be working on the job, and a variety of other things, that the fact that we had some five or six hundred cargo items to deal with as well as vessels of all types, that this would be a statistically impossible [383] thing to accomplish, and the second reason was that the employers were fearful that the measure, if the measure were provided in this fashion, that if we achieved the ultimate of arriving at a minimum number of men on the job handling a maximum amount of tonnage, that the fund would become kind of a monstrosity; I mean you would have the last man club we were talking about who would be pushing the final button, and yet you would be relating a fund to 30 million tons of cargo, and you would be building up a great fund which would not have any relation to anything in particular which was left on the job, and there were serious discussions by employer groups, not only on this coast but from other areas which led to the rejection of this type of direct measurement paying into the fund because the conclusion was reached that what we were doing was not establishing something forever, but we were buying out over a phasing period certain contractual restrictions that we would pay a price for and be done with it, and then face the next bargain.

So this was discussed with the union as part of the negotiations, and we told them our reasons for abandoning this approach.

Paul St. Sure—for Pacific, Intervenor—Direct

This union then proposed first a direct approach that for every man hour saved, regardless of how it might be saved, whether by way of better supervision or better facilities or better discipline, or by the introduction of [384] machinery, that we should pay into the fund one straight time hour of wages, their reason being that our fringe costs were so high that we would be making a substantial saving in fringes and lack of overtime, welfare, and pension payments, and that we probably could avoid the tax upon this money that would go into the fund, and we rejected that as being too arbitrary and too obvious a measure which we thought likewise would have problems of reporting and relating.

The union then took the position that we should collect the fund by a tonnage tax, and I think I should comment on that, if I may.

In looking over the report of Mr. Teige's committee, the majority report, I note it states that the union did not request a tonnage assessment.

Q. You are referring to what we call Exhibit 5-A—
A. I think—

Mr. Torre: And B.

By Mr. Ransom:

Q. 5-A and B? A. Well, on page 6 of that document, as I remember it, there is a single statement that the union—"This is particularly true since the union has never urged a tonnage formula as a means of paying for the fund."

The members of the majority group of that committee had not been on the negotiating committee. They were [385] appointed by the negotiating committee for a particular tax, and this is simply based upon wrong information or lack of information.

Paul St. Sure—for Pacific, Intervenor—Direct

The union did insist—particularly Mr. Goldblat, who was the secretary-treasurer of the union—that not only should the mechanization fund be based upon a tonnage assessment, but that all fringe benefits under the contract should be converted to a tonnage assessment, and this was the subject of very considerable discussion during the negotiation period.

Indeed, at one of the meetings—I think the ninth—we had some 40. We had Bridges himself proposed a formula in which he proposed that we apply a 29½-cent tonnage tax on all tonnage as the method of raising the fund that we were negotiating for. We rejected the proposal of the union that we agree to the method of collection on the ground that primarily we were fearful that if by contract we agreed to a tonnage tax, that this would become a contractual formula which would persist beyond the five-year term, and that we would find ourselves discharging cargo or the commodities we were handling, and we stuck with this as a principle for the future.

We rejected it both as to the conversion of our other fringe benefits to a tonnage tax, and we rejected it as a contractual basis for raising the money for the [386] mechanization fund, and we specifically told the union why we were rejecting it, and that we would commit ourselves jointly, and severally, to the raising of this money, but that we insisted that it was a matter within PMA to meet its contractual obligation as a part of this bargaining process that we had been going through, and that we might adopt a tonnage tax measure; we might adopt a manhour measure. We might adopt a combination of those, or we might find some other method of doing it, but that this we were going to reserve as a part of the implementation of this bargain that we had made.

Q. As part of the negotiations, the union did finally agree to what you were insisting on in determining the

Paul St. Sure—for Pacific, Intervenor—Direct

mech fund? A. They did agree on the basis of assuming our obligations that the monies would be forthcoming.

Q. Mr. St. Sure, once that agreement was reached with the union, was the situation that the union lost all interest in the method of collection? A. No.

Q. Or would you say there was a continuing interest? A. There was a continuing interest and a continuing concern as to whether or not the collections under the fund were being met. Obviously they have, by joint trusteeship, joint custody of the fund, and I can assure you that they [387] were alert as to whether or not the method of the custody, was working, because they believed this and, in fact, knew it was their money to spend in accordance with the agreement.

One of the reasons in connection with rejecting the union, on the East Coast, a similar situation had arisen with the ILWU on the Port of New York previous to the last strike with the same issue which is now being reviewed by the Undersecretary of Labor, and unresolved, and the union there took the position that any containerized cargo—and they singled out that particular item—should be assessed a penalty merely for the fact that it came in in a container, and the operators on this coast believed that this was a dangerous principle to single out individual cargoes, and say, "This will be taxed by the union for a particular purpose."

As in the case of Mr. Hopper's deal with the piggyback, five dollars for each container that goes aboard a truck, and so forth, the feeling here—right or wrong—was that this was an industry problem involving a total cost package, and that it should not be aimed at particular cargo movement.

Indeed, it was an obligation of the employers, as a group, to provide a total operation which would be available to all employers.

Paul St. Sure—for Pacific, Intervenor—Direct

[388] Q. Supposing that the PMA had adopted a system that, let's say, would result in abolishing whole segments of the industry, what would you think would have then been the union reaction? A. I am quite sure that if any agreement had been reached which would have brought about such a result, we would have an obligation, and I am sure the union would insist upon it, to reopen the bargaining and to resume the bargaining as to the means by which the funds were to be collected.

After all, this was a continuing relationship that we have, by the collective bargaining agreement, and my experience would suggest to me that we couldn't have adopted the method which would defeat the very purpose for which we had reached a bargain without having further negotiations.

Q. In your negotiations with the union on this M&M plan, was it a principal object of the employers to have all assessments of the industry, the stevedores, the carriers, the terminals, and various segments of cargo, all come out even without any advantages or disadvantages? A. No, this is something that is—whether this industry or any other that I know about—an impossible refinement to achieve. What this contract provides, and so described to our membership, is a blueprint which will give equal opportunity to those who work under it, and by that [389] I mean the employers who were bound by it, to operate efficiently, to make changes if they desired to, and to receive the benefits of the new agreement which eliminates work restrictions and so forth.

To this degree, the employers themselves may have control over what they can accomplish. It is obvious that investment of capital by one employer may produce a greater result of labor savings than would be available to the employer who didn't invest capital in new machinery, equipment or vessels. Indeed, this is one of the arguments

Paul St. Sure—for Pacific, Intervenor—Direct

that the foreign lines raised in the initial mechanization discussions, that they didn't contemplate mechanizing. The converse argument was that there was something in this for everybody.

There were things that had nothing to do with mechanizing. It had to do with work restrictions, but even the things that were available for mechanization were equally available to all employers to work under this agreement if they chose to operate in this fashion.

The matter of equal effect or impact on employers in a multiple employer group, I think obviously you don't get equal results.

In the canning industry, we have certain products that are so perishable they must be packed every day and processed the day they arrive, and yet a contract will [390] provide that Saturday and Sunday work will be at overtime, and the man who packs asparagus or peas, for example, must be paid overtime because he is an around-the-clock operation, in a sense.

Well, the other employer can avoid this type of penalty.

In our own operation during the 1958 negotiations, I believe we negotiated or agreed to an eight-hour guarantee for any longshoreman who was turned to as against the standard four-hour guarantee.

Our concern was in that negotiation that we would be guaranteed dead time; that is, there would be situations in which there wouldn't be work available. They might have a half a day's work and no more. We were likewise concerned with the fact that the inducement to guarantee the eight-hour day offered us by the union was that we could avoid specialization.

We had reached the ridiculous situation on this waterfront that a man working on the dock who was called in to palletize cargo, if he was asked to depalletize it would say, "Look, I was hired to palletize. I will pull it on the board, but I won't take it off."

Paul St. Sure—for Pacific, Intervenor—Direct

The shipping clerk would check out merchandise but he wouldn't check merchandise coming on the dock. He would say, "I am not a receiving clerk. I am a shipping [391] clerk," and I could suggest many other examples of his kind of tonnage specialization.

The clerks in that year came in with a request for 23 separate classifications of clerical work on what they call a chain of command. In order to bargain with the union, which was part of this bargaining process, for something that they wanted, which was the eight-hour guarantee, we said we will gamble with you provided you will wipe out all specialization on the docks.

A longshoreman is a longshoreman, and a clerk is a clerk. We reached an agreement that they would wipe out specialization, except that a man who was a skilled man or a skilled driver or a winch driver wouldn't be required to go down and handle cargo in the hold.

We likewise bought out what were known as the year priority limitations which was a restricted practice to prevent alleged discrimination.

We likewise bought something we had never had on this coast, the right not only to transfer men from ship to ship, dock to dock, and from company to company; we felt by getting this flexibility we would wipe out in large measure having to pay for dead time and would gain something.

In three months we ran a check of the actual result of that. Many of the objections from the employer's point of view were that this would result in an uneconomical [392] impact upon members of the industry.

We found after three months study, that actually the result from our point of view overall was a desirable one. However, it did occur that in a number of situations individual ships, individual cargoes were penalized, but the industry as a whole gained a tremendous benefit.

Paul St. Sure—for Pacific, Intervenor—Direct

So there was no exact equality of results, but the overall result was one that the industry bargained well for in our judgment.

Q. Mr. St. Sure, from your experience, do you know of other situations in other industries where a fringe benefit plan has been negotiated with the union and the method of raising this fund to take care of that fringe benefit was in the negotiations reserved to the employers?

A. Well, the most nearest parallel that I can think of, and I have represented department store groups in the joint bargaining, and the same thing has occurred I think in the milk industry where in bargaining for a welfare plan or a pension plan where you put a group of employers into a single package, and you have one employer who has been in business for ten years and one who has been in business 50 years, you necessarily have a different experience rating based upon the age group in the separate plants.

An old employer may have a work force which is an average of 50, and the new employer may have an average [393] cost of providing a hundred pensions, for example. These costs are quite different. The same is true with regard to welfare plans where age or sex will make a difference in the experience rating of a particular welfare item.

In these situations it is frequently done, and I have negotiated agreements where the employer agrees to guarantee a set of benefits and says to the union, "We are not going to tell you what the contribution is. We are going to provide within ourselves the method of providing the premium or the money required."

And then the employers themselves literally divide amongst themselves on an equitable basis how this money should be raised, which is not a part of the union contract.

The contract is to provide the benefit.

Paul St. Sure—for Pacific, Intervenor—Direct

Q. After the agreement of October 18 was reached, then how was it that you went about determining the method of raising funds? A. Well, during the course of negotiation, because of a division within our own membership, I made the commitment to the foreign line group, particularly, as well as to others not in the foreign group, that prior to ratification of the October 18th agreement, the method of collecting the money would be worked out internally within PMA and presented to our membership prior to ratification, so they would ratify both the October 18th memorandum and the method of collection at the same time.

[394] In order to accomplish this internal determination as a part of the ultimate bargain, the Coast Steering Committee, which is and was the negotiating group, named a subcommittee which is the Peter Teige Committee, and instructed that committee to consider the question of a method of collection, having in mind the various arguments that had been going on within the membership of PMA to make a recommendation which could be presented to the board of directors by the first of the year, and that in turn then presented to the membership of PMA for ratification.

Q. Was the fact that the Coast Steering Committee was a negotiating committee, did that fact have any bearing on why it was appointed as it was? A. Well, this was still part of the bargaining process. We were still actually trying to conclude the bargain which we had developed and had signed a memorandum to cover. We still had the responsibility as a negotiating committee of reporting back to the board of directors, and then to the membership, and this was simply a convenient means of calling in some men that we felt were more expert in this field than the negotiators were who were operating people to make a recommendation as to a method of payment.

Paul St. Sure—for Pacific, Intervenor—Direct

Q. And that committee did finally adopt a system of tonnage assessments? A. It did.

[395] Q. And that was ratified by the Steering Committee and by the board of directors and by the membership? A. That is correct.

Q. Subsequently, there was a change at some later period to include marine clerks? A. Yes, there was.

Q. Was there a precedent within the PMA machinery for contributions or assessments on a tonnage basis? A. Yes, for many years before my coming in to PMA there had been assessments for various purposes. As I say, we are a non-profit organization, and the assessments are to pay the operating costs of such organization and other things within the organization which are part of the collective bargaining agreement.

For instance, joint maintenance of the dispatch halls up and down the coast, some three-quarters of a million dollars a year goes to this operation, and the method of rating, both PMA fund as well as to meet such obligations under the contract, as the dispatch hall cost and the cost of paying arbitrators' salaries, and things of this kind which are jointly borne, has been assessed on the basis of tonnage.

Q. There has been a great deal of testimony in this case so far, Mr. St. Sure, on the method by which these tonnage dues, as well as the mech fund, are based, whether on [396] a weight or a measurement ton, and particularly as respects automobiles.

Can you state, if you will, how that method was determined for tonnage dues, as well as the mech fund? A. Well, the mech fund method was simply adoption of the method that had been in operation for many years for the same purposes and other purposes I have mentioned, and this was based upon the custom and practice of the maritime industry, and the tonnage assessment was based upon revenue tons.

Paul St. Sure—for Pacific, Intervenor—Direct

That is, however the cargo was manifested or freighted, and this being the accepted method within the industry competitively and otherwise for manifesting freight, this was the measure adopted in providing the PMA assessments.

On the basis of the industry itself having arrived at this method, therefore, we adopted it.

Q. And specifically as to automobiles, do you know how it was determined that they would be assessed on a measurement basis? A. So far as the automobile situation is concerned, with regard to off-shore or ocean operations, the practice of the industry as far back as memory seems to be in our organization, at least, is that the automobiles have been manifested on a measurement basis in these trades.

[397] The only situation that I can recall where this was even brought into question was at one time where somebody felt, well, maybe by reason of tonnage assessments in other areas, that somebody could get cute and could convert from measurement to weight and thereby save the assessment for normal association purposes, but as a matter of precaution our treasurer did send out a notice to all our members that automobiles as such had been customarily manifested on a measurement basis, and that we expected them to continue to report and pay assessments for automobiles on this basis.

But this, as I say, rested upon what I understand to be the custom and practice of the industry.

Q. Where any attempt is made by the PMA to assess on a weight or a measurement basis in one particular way, if it were not the custom and practice in the industry what would happen? A. Well, I think we would immediately have it called to our attention, and I think if there were any variation from the industry custom and practice which varied from the practice that competitively we would hear about it pretty quickly.

Paul St. Sure—for Pacific, Intervenor—Direct

Q. Then under the agreement, who was to pay the contributions? A. The stevedore or the district employer of longshore labor.

[398] Q. Did you consider that only the stevedores and the terminal companies would be expected to get benefits out of this, or would you expect there also would be some benefits to carriers, or both? A. Well, the whole purpose of the agreement was to improve the efficiency of longshore operations which in turn means to reduce the cost of handling cargo and provide a more efficient operation which, in turn, relates to the faster turnaround time of ships.

We expected to reduce our direct labor costs, both on the average and in detail. By that I mean direct labor costs that the stevedore or the terminal operator had to pay out by having less manhours to pay for.

We likewise expected that, if there was a saving, that this would have some direct benefit to his stevedore and his relationship to his customer as to whatever bargain he made with them, and we assumed, also, that the carriers would probably be aware of the fact that savings were being made, and might sharpen up their pencils in bargaining with the stevedore.

It was ultimately possible, I suppose, that the shippers would get some benefits from this, too, but this was not a matter that we were specifically concerned with, except as a by-product that might flow from having a more efficient operation.

[399] Q. Did you and PMA or your staff inquire into or have knowledge as to how the stevedores themselves raised the fund, whether they passed it on, or whether they absorbed it in part or in whole, or what? A. We have no knowledge as to how this was accomplished, and I heard testimony this morning about what some of the arrangements may be between the stevedore and his customers, or

Paul St. Sure—for Pacific, Intervenor—Direct

between the steamship lines and the stevedore. We do not know. We have not been able to inquire into what these arrangements are. These are essentially bargains made between the stevedore and the direct employer and the terminal or the steamship line or the carrier, or whatever other customers he may have.

We know that by general experience of the industry, there are arrangements which are cost-plus arrangements. We know that more and more there is a tendency now to go back to the commodity type arrangements. We know that there are certain tariffs involved and certain freight rates involved, but these are not matters of our concern, nor are we allowed to be concerned with them by the people we represent.

Q. Did you in this negotiation or in working out this plan consider it as another labor cost or as some kind of a rate on cargo? A. This is part of the total cost package for the employment of stevedores or the employment of longshoremen [400] and marine clerks under a collective bargaining agreement. We regard it from the point of view of the bargaining responsibility we have as no different a cost than the payment of a fee into a pension fund or into a welfare fund or some other fringe benefit, except that in this situation we felt that we were getting something in return for our money rather than a mere added cost.

Q. The plan has been in operation now for a little more than two years. Will you state how the plan is working out? A. Well, the plan officially was put into operation early in 1961. We had an understanding with the union that we were trying to reverse 25 years of practice. We were going to change what the union people referred to as the tribal rights.

We were going to eliminate double handling of cargo. We were going to move larger loads. We were going to

Paul St. Sure—for Pacific, Intervenor—Direct

eliminate men and do many things that had been going on in the reverse direction.

We also had the problem that we were treading on the toes of the Teamsters Union and had been party to the other part of this double handling, and we had some jurisdictional problems that we weren't too sure we could work out.

We agreed that we would approach it gradually on a step by step basis, and during the period of 1961 we began [401] to phase in these changes, and we are still in the process of doing this. We haven't completed the total operation to our satisfaction as of now, so you can scarcely say we have had a full year even.

In '61, we had a partial operation under the plan, and we are still proceeding under the plan, but by reason of a controversial productivity measure that we have attempted for the first time in this industry, establishing a base measurement for productivity in various ports and for various commodities on the Coast which was established for us by Dr. Kossoris; we have a comparison for the year '61 against the base year of 1960, which indicates that there has been something over a million man hours saved during the period of comparison.

This is not entirely accredited to our judgment, the mechanization fund, as such. It probably has partially to do with the tightening up of decline. It probably has to do with this eight-hour guarantee inflexibility, but the net result is that we have reversed the trend.

We have some rough comparisons without detailed comparisons which we are still attempting to make of '62 as against '61, which do demonstrate that by going back to the year 1958 and comparing the total picture in '62, whether by reason of this fund operation which we think is largely responsible for the additional factors I have mentioned, [402] we have been able to absorb all of the rates

Paul St. Sure—for Pacific, Intervenor—Direct

that were made for the period 1958 until 1962, and still handle the same amount of tonnage.

We think that this is a rather remarkable result in any industry in these days and these times. We think a large portion of it is the result of the mechanization plan, and the change in attitude that has been accomplished as a result of the application of this plan.

In addition to that, to add a further comment to how it is working, we anticipated that the attrition of the work force under the employment which was frozen as a result of our experience under our pension plan would amount to about four per cent a year.

We felt that this would largely compensate for the reduced manhours without penalizing the man that remained on the job by too little work opportunity.

We found that by reason of the benefits that were built into the plan by the union by use of this \$5 million that we have, three of which go to provide for retirement benefits, and a reverse kind of severance—what they call a vesting severance—which they can take with them when they leave the industry, and life insurance provisions, the balance goes to a guarantee of work falling not below 13 hours of pay.

These inducements have actually stepped up or did [403] step up the attrition rate to some nine per cent instead of four, and we have now actually registered additional men into the work force, so even from the point of view of social accomplishment we might have accomplished something.

Q. Mr. St. Sure, supposing that pre-1957 a new mechanical device would be introduced by a stevedore company, and assume further that that device did not actually change the number of men required to do the job. What would be your view as to the acceptance of such a new device pre-1957 and today by the union? A. Well, I am not sure

Paul St. Sure—for Pacific, Intervenor—Direct

I understand. I can give you several situations. We had the packaged lumber situation which initially brought a strike and a specific penalty on permitting that particular operation to continue as an exception.

We had in the situation with the change from sack handling of cargoes to bulk where machines were introduced, and the type of vessels were introduced, but we still had to employ the same number of men. They refused to recognize that the machine or the adjustment led to labor savings, so we got the witnesses.

We had 18 men on the payrolls that did not work, but there they were. We had situations such as the Matson Hawaiian Citizen which not only caused union resistance, but we had a tie-up for ten days in the Port of Los Angeles, [404] simply by reason of fighting the machine or fighting the change.

Following the mechanization agreement, such vessels as the Zellerbach vessels which are now making amazing records of cargo loading on this Coast of newspaper printing, now, not only have they been operating but operating with a number of men the employer said should be on the job and no more, and this wouldn't have been possible prior to the execution of this agreement.

We were on our way to arbitration with the alleged violation of the agreement in the Matson situation in Los Angeles, and we were constantly finding resistance to the removal of men from gangs, and I can tell you now in the readjustment of gang situations alone we have not had an arbitration on this coast.

And we have not had a union challenge that has gone to arbitration on this agreement. These things wouldn't have been possible before.

Q. Well, would there have been resistance before to some new sling, some new method of loading, which didn't appear one way or the other, that it was going to reduce

Paul St. Sure—for Pacific, Intervenor—Direct

the labor, but simply was a new device? A. Well, we had situations that weren't even a new device. The pallet board is perhaps the simplest example that I can give you. In some local unions, including the [405] one in San Francisco, the union unilaterally determined the dimension of the pallet board that they would utilize. They had to have so many boards, and they had to be yea thick, and they had to be of certain dimensions.

My recollection is that the Army, which is a very large shipper of cargo in this port, actually procured a board which they felt could be produced or procured more cheaply than the ones the union had elected to approve, and some thousands of these boards were actually built, and not one of them was used. The union would not touch them until after this agreement was put into effect, and those boards are now in use.

They were safe boards, but the union simply resisted anything which the employer introduced, which was not to their particular unilateral liking.

Q. Are you acquainted with the improvement or lack of improvement by Matson in loading automobiles? A. I have some general knowledge about it.

Q. Do you for example have any knowledge as to the number of man hours or the cost of loading automobiles by Matson pre-mechanization and post-mechanization? A. I specifically asked the Matson people when the Hawaiian Fisherman, which is now the Hawaiian Motorist, was put into operation. My recollection is the figures they gave me that their cost of loading an automobile by [406] conventional methods on a Matson freighter ran around \$12 per car.

On the first voyage of the Motorist, I was told that the cost was reduced to \$4 per car.

In addition to that, not only of the mechanism which was introduced for loading, they of course did provide

Paul St. Sure—for Pacific, Intervenor—Direct

a converted type vessel to handle the cars almost on a parking lot basis.

In addition to the handling cost, of course, the ability to bring in this type of operation which was a combined mechanizing of the loading equipment, the conversion of the vessel, and the use of the automobile, it has a mechanical device to stow; whereas it would take five days at a minimum to load a vessel with automobiles by conventional methods, the Hawaiian Motorist now turns around at each end of the line in less than 18 hours, and the number of men involved would be less than a conventional gang as against five conventional gangs with five days as a comparison.

Q. Has there been a reduction in what is called slowdown or work stoppages since this mech fund has gone into effect? A. Well, ten years ago our daily record was one of work stoppages in every port. I would doubt that during the last year we have had three work stoppages on the entire [407] coast and by that I mean job action.

This has disappeared. I think it is largely a combination of many of the things we have been talking about, but a specific part of the elimination of work stoppages or job action is a direct result of the mechanization fund by-product, let's say.

One of the provisions of the October 18th agreement was a guarantee by the employer that the new operation would not be onerous, and I stress that word because it was a very high point of the negotiations.

Mr. Bridges himself dug this word up out of the dictionary, and we had a Webster's dictionary in the bargaining session while we were negotiating, and he looked up just what this word meant, but the real danger of the renewal of work stoppage under this agreement was the resistance of the men to things that might be new, and this onerous thing could well provide a new method of resistance and work stoppage.

Paul St. Sure—for Pacific, Intervenor—Direct

We reached the question, if any question of onerousness would be raised, the union officials who negotiated the agreement said, "Look, we have got to find a way to stop this. We have full-time arbitrators in each port." It was agreed that there would be no claim of onerous work-load which would result in a work stoppage, that the men would immediately call for an arbitrator who would go to the site of the [408] work and would call it, and either tell the men to continue to work as directed or say there ought to be additional men or machines added.

This was fine in theory, but the arbitrators began having their legs run off at 2:00 or 3:00 o'clock in the morning, and the union agreed with us that they would develop a procedure whereby no man on the job would assert a claim of onerousness simply as a matter of a gimmick that any claim of onerousness would have to be made in good faith, and the good faith would be determined by having the business agent in the port go to the job, view the work, and then call an International officer in San Francisco and ask permission to call the arbitrator, and the International official said, "We will tell you right now we are not going to be talking to business agents at 3:00 o'clock in the morning," and that result has been that if there are arguments about onerousness the arbitrator is available.

We have very few of them, and this does keep the work going, so even this particular type of operation has been an improvement in the agreement reached on October 18th.

Work stoppages are now a rare thing, and job action is a rare thing on this Coast where previously it was a rule on a day to day basis.

Q. Mr. St. Sure, if as a result of this proceeding the Federal Maritime Commission should take jurisdiction of [409] this matter, and determine that the method of assessing automobiles was somehow illegal, what in your opinion

Paul St. Sure—for Pacific, Intervenor—Cross

would be the consequence as to this plan? A. Well, I assume that the plan would immediately be in jeopardy in that we as employers are obligated to fulfill the commitment of \$5 million a year. We would still have to find some method of raising the money, and I think we might then call upon the Board to come in and tell us how to do it.

I think the union would expect them to do so, also, because this is getting into an area of collective bargaining relationships where a commitment has been made which has to do solely with the employer's obligation to meet contractual commitments to the employees within the bargaining unit.

I could visualize not only chaos but I think I likewise visualized the Board having to come in and call the shots on every bargain that we made here on out. Every agreement we make in relation to bargaining has an indirect effect—

Q. Including wages? A. Including wages, fringe benefits, sick leave, all the rest of it.

Examiner Theeman: Off the record.

(Discussion off the record.)

[410] Examiner Theeman: On the record.

Mr. Ransom: That is all.

Examiner Theeman: A five-minute recess.

(Short recess.)

Examiner Theeman: On the record.

Cross-examination by Mr. Madden:

Q. Mr. St. Sure, in the assessment of basic dues for the purpose of keeping the PMA running, which is based at least in part, as I understand it, on tonnage, who pays the dues on tonnage which is carried by a PMA member steamship company discharging on the Pacific Coast? A. The stevedore terminal operator. We have a variety of such

Paul St. Sure—for Pacific, Intervenor—Cross

dues. I mean a PMA member operating on the Pacific Coast as a steamship operator pays a separate set of dues to cover the cost of negotiation of offshore contracts based upon personnel employed aboardship, but the so-called cargo dues and the manhour dues are based upon the tonnage paid by the stevedore or—

Examiner Theeman: Let us go off the record a moment.

(Discussion off the record.)

Examiner Theeman: On the record, please.

The Witness: My understanding is that the member dues for PMA steamship company members may be paid either by [411] the stevedore or the terminal operator or by the steamship company directly.

However, the stevedore or terminal operator is responsible for the payment of so-called tonnage and manhour dues with reference to non-member companies that he may serve. This is consistent with the voting procedure in PMA where the stevedore can vote under our present by-laws the tonnage of non-member companies he serves, but the steamship line votes its own tonnage; in other words, extracts it from the stevedore who serves him and votes it himself, so for this or perhaps other practical reasons this is the alternate method of payment.

By Mr. Madden:

Q. I will refer you to Exhibit 35, which is a declaration or bulletin to members with reference to implementing the mechanization and modernization fund dated January 17th.

In paragraph 7, you will note that it provides that "Declarations of tonnages will be made, as in the past, by member steamship companies and contracting stevedores reporting for non-member companies and government agencies,

Paul St. Sure—for Pacific, Intervenor—Cross

being made in exactly the same manner by such companies as PMA dues."

Then am I correct that, so far as the basic dues are concerned, that the member steamship company might still report his tonnage and pay direct right to PMA the assessment [412] for those dues? A. I believe that is true, yes, sir.

Q. And for the shore members of the PMA, such as the stevedore and terminal operators, their tonnage dues in such situation would be limited to the tonnage handled for the non-member companies and government agencies? A. Well, that would be so. I mean the total tonnage is covered in one fashion or the other.

Q. Now, apparently from this bulletin originally it was contemplated the same method would be followed in collection of the mech fund assessments, but I understand that is not the case. Do you recall when that change occurred? A. Yes, I do. I think administratively, when the fund was initiated, Mr. Saysette's department, and I am sure with my approval, simply adopted the method that had been followed for the collection of tonnage dues.

We then learned that this was part of a bargaining agreement and a specific payment as part of the bargaining agreement, and because of the requirement that we had with the Internal Revenue's requirement that the assessment be paid directly by the employer of the labor, it was introduced and the instructions were therefore changed.

I should indicate that the entire approach, from the standpoint of it being a bargained benefit, was so novel that we were on rather strange ground with the Internal [413] Revenue Service in getting approval of this, and it was only with the specific assistance of the Secretary of Labor, who recognized the type of agreement that we had reached, that we were able to get the Internal Revenue Department which permitted the reductions to be made because part of the

Paul St. Sure—for Pacific, Intervenor—Cross

agreement that we had with the union was that the mech fund would not come into play unless it were approved by the Treasury Department, as a deductible item, as a wage or collective bargaining payment.

Q. As far as the basic dues are concerned, though, the tax problem, I assume you would agree does not arise if a member steamship company pays his dues directly to PMA?

A. I assume not. I hope there is no problem involved.

Q. But in order to qualify for this mech fund set-up, it was necessary to change the method so that the direct employers of the men made all the payments? A. Well, I assume a change was made to relate it to what in fact it was, a wage bargaining settlement.

Q. I believe in your testimony you stated rather clearly the distinction between the benefits provided in the labor contract and the method employed to collect that benefit.

If I wrote it down correctly, I believe you stated in effect the contract provides for the benefit, but the method of collection is no part of the contract. It is [414] between the employers themselves. A. Correct.

Q. And when the PMA ratifies the overall package, you might say, they in effect ratify the contract, and then they ratify the method of assessment at the same time. A. Yes, our own members required that the method of assessment be determined before they would vote on a ratification of the contract.

Q. I see. A. So this was part of the total ratification.

Q. I believe you also stated that it was recognized by the PMA and those who were working on the plan that the aim of the contract was to give equal opportunity to all interested persons to develop new methods of handling cargo, but it couldn't really be expected that equal results would result to all operations. A. That is correct. There would be differences in trade, differences in commodities, differences in money vested, differences in the imagination of the opera-

Paul St. Sure—for Pacific, Intervenor—Cross

tors to devise new methods. Each of these things would produce a different result.

Q. And each of these opportunities that you referred to as equal opportunity to adopt methods were available in effect to all members of PMA and not merely the stevedores or terminal operators, but they were intended to benefit [415] the steamship operators in turnaround time, improvement to vessels, and so forth? A. That is correct.

Q. To your knowledge, did the directors give any consideration to the effect of a tonnage assessment, based on this traditional method that the PMA used in basing dues, what effect it would have on actual stevedoring and terminal operations themselves, or was it just a convenient and available method to tie it into a revenue ton basis? A. I am not sure I follow you. The method that the industry had used in connection with tonnage assessments in other areas has been well established over a period of years based upon the custom of the industry in manifesting or freighting cargo.

I don't recall any discussion with regard to whether it was an improper method or whether anybody raised any question that it was. The basic debate in the industry was the question of manhours against tons. I mean this was the problem that we were wrestling with.

Q. But the method of collecting dues on a revenue ton fell on the steamship company which reported its tonnage and on the stevedore who reported the non-membership tonnage.

Now, in assessing for the mech fund the direct burden of paying for all this tonnage falls directly upon one of the two, that is, the contracting stevedore, does it [416] not? A. Well, the burden falls on the contracting stevedore in the same sense that a wage increase falls on the contracting stevedore. It falls directly on him where welfare charge or whatever goes into the package that you have to deal

Paul St. Sure—for Pacific, Intervenor—Cross

with the union about, these are total charges of labor costs which go into the bargaining agreement.

Q. What I am driving at, Mr. St. Sure, is you think that a revenue ton basis which is used by steamship companies in determining rates for carrying cargo is an appropriate measure in determining the assessment which would fall on the handlers of the cargo at the loading or discharging port, and when I say revenue tons I am talking about revenue tons for the purpose of measuring the tonnage which is assessed. A. Well, I can only speculate as to that. I don't know. I mean the whole area of rate making and things of this kind is completely foreign to me, and even the distinction between weight ton and revenue ton has been a mystery to me.

I can simply say that this was a method which the industry had used, and it was adopted. It was specifically referred to the people operating in the industry, both foreign and American interests, and they came up with a recommendation, and this was adopted.

[417] Q. How is the coastwise cargo charged under the mechanization fund; that is, it is loaded on the Pacific Coast and discharged on the Pacific Coast so that there are two handlings of the cargo. Do they pay a full assessment at the loading? A. Well, again, traditionally, there have been the recognitions of the fact that the same cargo was handled twice under the collective bargaining agreement, and with regard to the labor functions under PMA the coastwise operators, when they were still running, and maybe one or two occasionally now were given recognition of the fact that since this did relate to the collective bargaining agreement they shouldn't have to pay twice, even though there might seem to be some anomaly in this situation.

If there had been some agreement with regard to costs in that area or similar areas with regard to coastwise operators—

Paul St. Sure—for Pacific, Intervenor—Cross

Q. Is that true on carriage to the Hawaiian Islands? A. No, this was the Matson people who have a separate mechanization fund now which operates for the same purpose, so they meet it at both ends of the line.

Q. You referred to a packaged lumber penalty of \$1.00 per man hour which was negotiated at an earlier dispute in order to permit lumber to be shipped in packages. Is that correct? [418] A. That is my recollection of it. It was before my time, and I had merely heard of the Chamberlain dispute, and the resulting \$1.00 penalty to permit this particular method to be used.

That is my knowledge of it, based on that type of report.

Q. Do you know whether that penalty still continues? A. No, I understand that only the coastwise operators are involved who are not members of PMA, but I understand that they have been able to negotiate some agreement whereby the \$1.00 penalty has been replaced by what the union regards as an equivalent payment under the mech fund, and the \$1.00 penalty, as such, has now been wiped out.

Q. Originally coastwise lumber was assessed under the mech fund, was it not, at 27½ cents per thousand board feet, as a measurement equivalent of tonnage? A. It could be. If this is so, I will accept it. I am not familiar with that detail.

Q. I believe it appears— A. Forty cubic measurement and 1,000 board measurement, constituting a ton on Exhibit 35?

Q. Yes, sir. A. Yes, sir.

Q. Do you know whether it is still assessed on this basis? [419] A. I do not.

Q. At the time that the formula of the assessment for the mech fund was adopted in January of '61, do you know whether the directors were aware of the volume of foreign automobile imports to the Pacific Coast at that time? A. Well, the matter was discussed, I recall, because the question was specifically raised as to the application of the

Paul St. Sure—for Pacific, Intervenor—Cross

assessment to foreign automobiles, particularly Volkswagens.

Now, what detail the questions in volumes of amount or what specific tonnage, I don't recall any specific question on that score.

Q. As an aside, do you attend the board of directors meetings? A. I preside at them.

Q. When the formula for the mech fund assessment was first adopted—that would be, I take it, about January 16, 1961, according to this memorandum—at this particular time were the directors aware that the assessment on unboxed automobiles would be on a measurement ton basis, or was that something that developed later? A. No, I believe they were aware of it. I believe the matter was discussed prior to the time of the membership ratification on the 4th of January. I think this was all in the package, and in the discussion, both before the [420] membership ratification, before the directors' second action.

The directors first voted to recommend to the membership and the membership ratified this action on the 6th of January. These matters were under discussion prior to ratification.

Q. Well, isn't it true that at the meeting, on approximately the 4th of January, there was no discussion as to how the tonnages would be applied; that is, on a weight or measurement basis? A. (No response.)

Q. Wasn't it merely a general resolution that the assessment would be made on a tonnage basis? A. I think this is true of the discussions. However, when I presented the matter to the membership, this was discussed in this fashion.

Q. In the two years during which the mech fund or the M&M program has been in force, can you state from these studies or reports that you had who has benefitted the most from the program? A. No, I cannot. The studies show averages on a port basis for commodities by group. They show that the principal benefit has been in the Port of Los

Paul St. Sure—for Pacific, Intervenor—Cross

Angeles. We would expect it to occur because of the lower base to start from. It shows that during some portion of the first year that actually we did less in the Northwest ports than we have been [421] doing previously on an average basis.

The reports we have do not enable us to pick out specific employers of individual companies as to individual cargoes.

Q. I would like to ask you your personal opinion as to whether a measurement ton assessment on automobiles at the same rate per ton as applied to other commodities, excluding bulk commodities, is an equitable basis for assessment. A. I don't know that I have any opinion on that. It would seem to me that if a measurement ton basis was used by the industry for the purpose of determining freight rates, it might well be used for some other purpose.

I simply have no opinion on the subject. I assume that we have been operating on what the industry's practice and custom has been with relation to applying charges to specific operations.

I mean the argument philosophically about whether or not for example a low cost cargo should have to bear the same rate as a high freight cargo, this gets into an area of economics I am not qualified to speak on.

Q. You are aware, though, are you not, that a full cargo of Volkswagen automobiles from a ship is an operation that requires both before and since the mech fund assessment a great many less manhours than cargo, generally? [422] A. No, I wouldn't know that. I frankly don't know.

Q. I assume, though, that this argument has been made to the board of directors by Volkswagen and others who have protested the assessments from time to time? A. The Volkswagen representatives did appear before the committee that was originally charged, and a committee which was later reconstituted, to again review the matter in response to a suggestion at the membership meeting that the total matter be reviewed within six months because of

Paul St. Sure—for Pacific, Intervenor—Cross

protests that were made specifically by Volkswagen, and some other cargoes, and the committee reviewed the matter, and their recommendation was that the method of assessment, as recommended, be continued.

Q. Do you know of your own knowledge whether Volkswagen has protested the entire mechanization assessment or only the amount of its impact upon its operations? A. I have seen correspondence where they have indicated they are not opposed to the total program, but they are opposed to its impact upon Volkswagen.

Q. It is true, is it not, that so far as the assessment on a measurement basis of unboxed automobiles, the increase in the cost of discharge is at a considerably higher percentage than for general cargo and bulk cargo? A. Well, frankly, I have never seen an analysis of [423] this. We have in the productivity report, as I recall, some 600-odd items of cargo. This might or might not be true if a comparison were made of all the items handled in a so-called general cargo operation.

I just don't know.

Mr. Madden: I think that is all, Mr. St. Sure.

Mr. Ransom: May we go off the record for a moment?

Examiner Theeman: Off the record.

(Discussion off the record.)

Examiner Theeman: On the record.

Without objection, a letter dated March 16, 1961, from PMA to its members, is admitted in evidence as Exhibit 55.

(The document above referred to was marked Exhibit No. 55 and was received in evidence.)

Examiner Theeman: A letter dated December 14, 1961, from PMA to its members, Exhibit 56.

(Tr. 423-424, 427)

237a

Ellet G. Horsman—for Respondent—By Examiner

(The document above referred to was marked Exhibit No. 56 and was received in evidence.)

Examiner Theeman: And a letter dated December 20, 1961, from PMA to its members, is admitted in evidence as Exhibit 57.

[424] (The document above referred to was marked Exhibit No. 57 and was received in evidence.)

Mr. Ransom: Thank you. I have no further questions.

Mr. Zimmerman: I have no questions.

Examiner Theeman: Thank you very much, Mr. St. Sure.

The Witness: Thank you.

(Witness excused.)

Examiner Theeman: The hearing will be recessed until 2:00 p.m. tomorrow.

(Whereupon, at 4:20 o'clock p.m., the hearing in the above-entitled matter was adjourned, to reconvene at 2:00 o'clock p.m., Friday, April 26, 1963.)

* * *

[427] Whereupon, ELLET G. HORSMAN, was recalled as a witness by and on behalf of the Respondent, having been previously duly sworn, resumed the stand and testified further as follows:

Direct examination by Examiner Theeman:

Q. Just to review a moment, Mr. Horsman, under some questioning by Mr. Madden, you stated that in January 1961 there was a meeting at the PMA which you attended, and it was also attended by a number of other stevedores, and you gave a list of the number of stevedores that were there at that time.

Ellet G. Horsman—for Respondent—By Examiner

As I recall it, you listed among the stevedores a number who were handling Volkswagens and a number who did not handle Volkswagens, is that correct? A. Could I have a review of the names I mentioned? I think the names mentioned were primarily the stevedores who at that time were handling Volkswagens, and that is why the names were still familiar in my mind.

Q. Well, I don't have the list of names. They are on the record, and I believe under subsequent questioning there [428] was a statement by you that some of those stevedores did and some of them did not handle Volkswagens.

Do you recall whether that is correct, or would you care to list again the names of the stevedores that were there? A. The names I believe I mentioned were—I will give the surnames, Ebby, Smith, Anthony and Whisnant.

At the time, these were men who represented their stevedoring companies, and at that time had or were going to handle Volkswagens, but they are primarily not only contractors who only handle Volkswagens.

Q. Well, do you recall any other stevedore? Again on the record I believe these were more than five named by you. A. In fact, there was a representation of all the stevedoring firms on the Pacific Coast.

* * *

[429] Q. Now, will you state for the record what your experience was with the common carriers? A. Pertaining to vehicles?

Q. Pertaining to vehicles. A. There are several common carriers in which Marine Terminals Corporations have contracts with that have carried cars over the past three years.

Other than Volkswagen's objection to the method of assessment, strong objection has also been given to us, both orally or verbally, and through written comments

Ellet G. Horsman—for Respondent—By Examiner

from [430] Hanseatic Vaasa Line who, next to Volkswagenwerk, are our largest account carrying automobiles for discharge on the Pacific Coast.

The other carriers which I have named earlier gave no written comment, and if they had given verbal comment, whether for or against, I cannot remember. They could have directed their comments to other members of our firm.

Q. The common carriers paid the bill? A. The common carriers have paid the bill.

Q. Are they still continuing to pay the bill? A. They are still continuing to pay the bill. However, we have been put on notice by the Hanseatic Vaasa Line that they expect equal treatment from our association, Pacific Maritime Association, as would be given to Volkswagenwerk.

Q. And your bill shows still the mech fund assessment as a separate item? A. Yes.

Q. For automobiles, whether it is a Volkswagen or other automobile? A. No, in billing a common carrier we only show the total amount of tons that are assessed. In other words, if you have a thousand measurement tons of automobiles and 200 weight tons of general cargo, your invoice would show 1200 tons as the mechanization fund.

In the bill of itself we do not break down between [431] automobiles and general cargo, but it is there.

It can be ascertained from the body of the bill, but actually extending the assessment it is not separated from general cargo.

Q. That is your grand total of assessment? A. Yes, sir.

Q. But the assessment itself is broken down by individual items to show the amount for the mech fund and the amount for general cargo? A. Yes.

Q. Excuse me, the amount for the mech fund for automobiles and the amount of the mech fund for general cargo? A. No, it is all lumped together. I mean it is just the total amount of revenue tons based on the mechanization fund

Ellet G. Horsman—for Respondent—by Mr. Zimmerman

assessment times the present amount, 27½ cents or 26½ cents.

Q. Do I understand that general cargo, then, is also assessed at 27½ cents a measurement ton? A. No, it is as freighted or as manifested. There are formulas or instructions that we have on what commodity takes it on a weight, and what commodity takes it on a measurement basis.

Q. Well, just to clarify it, would you give me an example of the way in which the bill occurs where you have an automobile, and then you have some other type of general [432] cargo than automobiles which does not take the same mech fund assessment as an automobile? A. Let's take an example. We have a ton of Borax and we have a ton of cotton, and we have one automobile. The mechanization fund bill would show the Borax at one weight ton, the cotton at one weight ton, and the automobile, if it measured ten cubic tons, would show ten for a total of 12 times 27½ cents.

* * *

By Mr. Zimmerman:

Q. Mr. Horsman, you mentioned the names of four men to whom you talked at these PMA meetings. Would you mention [433] the names of the stevedore companies that were represented by those men? A. I believe, Mr. Zimmerman, that I gave that the other day, but to go back over it, Mr. Ebby, representing California Stevedore & Ballast Company in San Francisco, Mr. Fred Smith of Seattle Stevedoring Company in Seattle, and Mr. John Anthony, Associated Banning Company in Los Angeles, and Mr. Neil Whisnant, Brady-Hamilton Stevedore Company, Portland, Oregon.

* * *

Ellet G. Horsman—for Respondent—Cross

Cross examination by Mr. Madden:

[436] You stated that subsequent to this meeting you then billed Volkswagens and other foreign cars by putting the mechanization fund as a separate item. Did your method of billing have any bearing on the fact that you had had the meeting? A. No, this was the instruction on how this was to be billed. As I remember, that was the reason for the meeting.

Q. But did it have any bearing on this after the meeting, discussion? [437] A. At the time, it hadn't actually gone into effect yet, the actual billing. In other words, there was still a question of what the various commodities would bear, bulk, scrap, automobiles, and at the time it was decided that the rate would be so much a ton, and bulk was then given a reduced rate from the original thinking, and I believe it wasn't until February 1961 that the actual billings took place, and the method of billing was, of course, up to the stevedore.

And one of the reasons for the meeting—or it wasn't actually a meeting of the stevedores. It was why we were at a general meeting of the PMA—our concern was that if the mechanization fund is applied against automobiles on a measurement basis, our customers were going to object, but at the time there was no ship that hadn't billed yet, and it must have been another, so it was after this meeting that actually went into effect.

Q. So that all billing was subsequent to the meeting? A. Yes, sir.

Q. There wasn't a change in billing procedures as a result of the meeting? A. No, sir.

Q. You hadn't billed before? A. We hadn't billed it. It was some month later.

Q. Tell me, what was the conversation of the group [438] of these stevedores, either before or after the main

Ellet G. Horsman—for Respondent—Cross

meeting of the PMA at this time? What were you talking about? A. We knew beforehand that if the mechanization fund on automobiles was placed on a measurement basis, that our customer would object, and it would be our position to hear their reasons for the objection, and place these objections before our association.

Mr. Ransom: No further questions.

By Mr. Madden:

Q. Was the reason that you knew your customers would object the fact that you all knew that it would be necessary to pass this assessment on to the customers? A. I don't know.

Q. As a cost? A. I gathered in the conversation that no one could absorb this in their present commodity rate at the time.

Mr. Madden: That is all.

The Witness: I can't say this for sure. We could not, Marine Terminals Corporation.

• • •

(Exh. 1-A, 1)

243a

Exhibit 1-A

[1] (MEMORANDUM OF UNDERSTANDING

Between

PACIFIC MARITIME ASSOCIATION
(on behalf of its Members)

And

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION

(on behalf of itself and all Longshore and Marine Clerks
Locals in California, Oregon and Washington))

The following statements cover those items agreed to
by the parties in the 1959 negotiations as amendments to
the 1958 ILWU-PMA contracts, which contracts are re-
executed, except as modified hereby:

WAGES

LONGSHORE

The basic straight-time wage rate for men paid on a
6-hour day basis shall be increased by 11 cents per hour
effective 8 a.m. Monday, June 15, 1959. This brings the
basic straight time rate to \$2.74 per hour and the overtime
rate to \$4.11 per hour.

For special categories of Longshoremen historically
paid on an 8-hour straight time basis, the basic straight
time rate shall be increased by 12½ cents.

CLERKS

The straight time rate for Clerks is increased by 14
cents per hour, bringing the rate to \$2.93 straight time and
\$4.39½ overtime. (This is the increase applicable to Long-
shoremen on an 8-hour basis, plus 1½ cents.)

The Clerks will receive additional increases of 1½ cents
effective as of the day shift on the Monday nearest June

Exhibit 1-A

15, 1960, and June 15, 1961; thus over the three year period of the contract, getting a total additional increase of 4½ cents. It is agreed that this amount wipes out the earnings differential between Clerks and Longshoremen.

Over and above these increases, Supercargoes and Chief Supervisors are to receive 4 cents per hour additional, effective as of the day shift June 15, 1959, and as of the day shift on the Monday nearest June 15, 1960, and June 15, 1961. It is agreed that this amount (12 cents) wipes out the earnings differential between these men and walking bosses.

RETROACTIVITY

It is agreed that the wage adjustments negotiated for 1959 shall be effective with the day shift on Monday, June 15, 1959, and retroactivity shall apply up to but not including August 10, 1959. If the Union has not approved this settlement on or before August 10, 1959, then the Employers shall continue to pay the rates of pay in effect prior to this settlement and shall continue payments of wages on that basis until notified in writing that the Union has accepted [2] the revised rates as negotiated. When such written notification is received the Employers will then place the new rates in effect on the day shift of the Monday following such notification, and the application of retroactivity will be applicable for the period starting with the day shift on Monday, June 15, 1959, up to but not including the day shift beginning on Monday, August 10, 1959.

MECHANIZATION

Mechanization and the utilization of laborsaving devices have been a subject of discussion between the parties since 1957. During the course of the 1959 negotiations the following items were agreed to on this subject.

(Exh. 1-A, 2)

245a

Exhibit 1-A

To allow a certain amount of time (not more than one year) for the parties to further study and gain factual experience:

- (1) of actual changes made by laborsaving machinery, changed methods of operation, or proposed changes in working rules and contract restrictions, resulting in reduced manpower or manhours with the same or greater productivity for an operation;
- (2) of savings to the employer because of such changes;
- (3) of a proper share of such savings to be funded as hereinafter provided; and
- (4) of the manner of distributing such fund to the fully registered work force:

A) PMA proposes to create a coastwise fund for the fully registered work force, through contributions by the Employers to be accumulated during the first ensuing contract year, in the amount of one million five hundred thousand dollars. This amount, in addition to "buying time" for necessary study and experience, represents a recognition by the Employers that savings accrue as a result of mechanization and changed methods of operation, and a recognition by the Union that no additional payment is due for changes made or to be made prior to June 15, 1960. This payment shall constitute a part of the consideration for renewal of the contract, and shall be distributed to the fully registered work force in a manner to be determined. (Tax and legal problems to be resolved.)

B) It is the purpose and intent of the parties, during the course and as the result of this study period, to achieve and meet the following aims and objectives:

Exhibit 1-A

1. To guarantee the fully registered work force a share in the savings effected by labor saving machinery, changed methods of operation, or changes in working rules and contract restrictions resulting in reduced manpower or manhours with the same or greater productivity for an operation.

[3] 2. To maintain the 1958 fully registered work force, with allowance for normal attrition.

3. To create a coastwise fund for that work force through contributions by the Employers, such contributions to come from savings described in paragraph B) 1. hereof.

4. To provide that this fund will be separate from contractual wages, pensions, welfare and vacations.

5. To guarantee the PMA the right to make changes, and remove restrictions along with protection against reprisals for making such changes, and enforcement under the contract of such changes if and when made.

During the ensuing year, in addition to making of such study, the following agreements shall be in effect:

a. PMA will accumulate the one million five hundred thousand dollar fund as provided in A) hereof.

b. PMA shall be free to make such changes as are deemed necessary under Section 14 of the present Longshore contract, and Section 25 of the present Clerks' contract, restricted however by the observance of rules prohibiting individual speed-up and unsafe operations. The load agreement shall continue.

Exhibit 1-A

Except for changes in operations made hereafter by introducing laborsaving devices in addition to those already used and practiced by him in the past, the Employer shall not invoke the provisions of Section 14 of the Longshore Agreement or Section 25 of the Clerks' Master Agreement during the ensuing year. Nor shall the Employer seek a reduction of gang sizes or number of Clerks, elimination of multiple handling, or other existing contract or working rule restrictions with relation to operations now existing, except during future annual review negotiations or by mutual agreement.

c. The parties will continue negotiations on the matters outlined in this proposal for a period of not to exceed one year for the purpose of determining a basis for converting the above fund and Employer contributions thereto to a continuing basis which will meet the aims and objectives set forth herein. Such negotiations shall not exclude tonnage taxes, manhour assessments, or any other basis of conversion, nor exclude conversion of present contributions for welfare, pensions and vacations.

[4] d. The parties shall continue to operate in accordance with the terms of the contract and working rules, with mutual agreement against reprisals and for enforcement of the contracts, working rules and the provisions of this agreement.

8-HOUR GUARANTEE**A. APPLICABILITY**

1. There shall be a guarantee of 8 hours of work to men when ordered and turned to work.

(a) This guarantee shall apply only to fully and limited registered Longshoremen and fully and limited registered Clerks.

Exhibit 1-A

(b) It shall go into effect on the day shift on January 1, 1960, for Longshoremen; for Clerks it shall be effective upon approval and ratification, prospectively August 10, 1959.

2. On the day shift, the 8-hour guarantee of work must be provided between the hours of 8 a. m. and 6 p. m.

On the night shift, the 8-hour guarantee of work must be provided within a spread of nine (9) hours from the normal starting time, excluding the meal hour. (This shall not change San Francisco Rule #2, Page 63, Brown Book.)

B. METHOD OF PAYMENT—DEAD TIME

1. In the event that dead time results, and 8 hours of work cannot be provided, dead time on the day shift from Monday through Friday shall be paid for at the straight-time rate of pay.

Note: When dead time is created at the beginning of a day shift by starting later than 9 a. m., overtime shall not apply until 6 hours have been worked or until 5 p. m., whichever occurs first.

2. All other dead time—nights, weekends and holidays—shall be paid for at the overtime rate of pay.

3. No penalty cargo rates shall be paid for during dead time.

C. EXCEPTIONS TO 8-HOUR GUARANTEE

1. (a) For men ordered, reporting for work and not turned to, the 4-hour minimum shall apply, except where inability to turn to is a result of insufficient men to start the operation. Present port rules defining number of men required to start operations shall apply.

Exhibit 1-A

(b) Where a Clerk is ordered to work against a ship and cannot turn to because of insufficient men as in Rule C. 1. (a) above and there is no place to shift said Clerk, the 4-hour minimum shall apply.

2. Longshore baggage men and linesmen, but not baggage Clerks are excluded from the 8-hour guarantee, and their minimums remain uncharged from the 1958 minimums.

[5] 3. When Longshoremen and/or Clerks are employed at Selby, California, (This applies to Selby only.) Employers may shift men to other operations to fill out the 8 hour guarantee, otherwise the guarantee is only 4 hours. If men are not shifted to other work but are ordered back after a mid-shift meal, a second 4-hour minimum shall apply.

5. The inclement weather exceptions to the 8-hour guarantee shall be as follows:

(a) When men are turned to, and work cannot commence or continue because of bad weather (such determination to be made by the Employer), a 4 hour minimum shall apply.

(b) When men are ordered to return to work after a mid-shift meal and work cannot resume because of inclement weather (such determination to be made by the Employer), a second 4 hour minimum shall apply.

(c) Dead time resulting from inclement weather shall be paid for as provided in Paragraph B.

5. Present rules governing stop work meetings shall continue. Any hours lost as a result of such meetings are deductible from contract minimums. Similarly, any hours lost as a result of short shifts resulting from union unilateral

Exhibit 1-A

action or mutual agreement of the parties are also deductible.

6. In those ports where a 4 p. m. or 5 p. m. stop is provided by rule for specific days, the minimum guarantee on such days shall be from the starting time, which for payroll purposes can be no later than 9 a. m. to such 4 p. m. or 5 p. m. stop.

7. (a) When an operation of short duration requires extra Longshoremen from the skilled classifications and such men are ordered and turned to, they shall be entitled to a 4 hour minimum, and can be transferred to comparable work on the original dock or ship to fill out this minimum.

(b) When such men are shifted to comparable work on other docks or ships or are ordered back after a mid-shift meal the 8 hour guarantee shall apply.

8. When gear men are called in on an emergency, local rules rather than the 8-hour guarantee shall prevail.

9. When men have been ordered and fail to report to work at all or on time, thus delaying the start of an operation, the time lost thereby until replacements have been provided or until the man or gang has turned to shall be deducted from the guarantee.

10. Men or gangs refusing to shift, quitting or discharged for cause, shall be paid only for the time worked.

[6] 11. A replacement gang ordered from the dispatch hall to replace a quitting gang shall not be eligible for the 8-hour guarantee, but shall be eligible for the 4 hour minimum. This only applies when a gang quits during the course of the 8 hours of work or quits by refusal to work

(Exh. 1-A, 6)

251a

Exhibit 1-A

the extensions for shifting or sailing provided in the agreement.

12. Where men are turned to and work less than 8 hours by reason of quitting, discharge for cause, or injury, and a replacement is ordered by the Employer, the 8-hour guarantee is not applicable and the men shall be paid as follows:

- (a) The man being replaced to be paid for time worked;
- (b) The replacement is to be paid for time worked, or the 4 hour minimum, whichever is greater.

D. MANEUVERABILITY AND FLEXIBILITY OF THE WORK FORCE

1. In order to prevent as much as possible Employers being required to pay for "dead time" or time not worked by the application of the 8-hour guarantee, the Employers shall have maximum maneuverability and flexibility of the work force, Longshore and Clerks. They may shift men and gangs—from ship to ship, from direct employer to direct employer, from steamship company to steamship company or any combination thereof.

(a) Employers shall have the right to shift men and gangs at their option in order to fill out the work guarantee. Men and gangs must shift as ordered.

(b) Employers may move skilled longshore classifications, such as winch drivers, hatch tenders, gang bosses, crane men, lift drivers, jitney drivers, etc., to comparable work: 1) on board ship, 2) on the dock, 3) on barges or between any of the locations listed in 1), 2), and 3), and the men shall be obligated to shift. No skilled classifications will be

Exhibit 1-A

required to shift and do physical labor (hand handling) such as dock work, car work, hold work, etc.

(c) Skilled classifications of clerks, such as supercargoes, supervisors, etc., may be shifted by Employers to comparable work or to any Clerks' work to fill out the shift guarantee without reduction in their skilled pay rate.

(d) Men in ship gangs can, at the option of the Employers, be shifted to any other work including all dock and car work in order to fill out a shift.

(e) Dock men or dock gangs shall not be shifted to work aboard ships to get the 8-hour guarantee but may be shifted to any work on docks, cars or barges.

[7] (f) In those ports where working rules do not now provide swing men (ship or dock men), the Employer has the option to order up to two swing men for each discharge gear working. These swing men may be used for any dock work and/or for hold work in any hatch. This will hold true whether or not dock men or gangs are ordered and whether or not, under local rules, dock men or gangs must be released as a unit.

In those ports where working rules do not now provide swing men (ship or dock men), the Employer has the option on loadouts to order additional hold men (not to exceed two for each gear working) for assignment as needed. These men may be used for any dock work and/or for hold work in any hatch.

(g) Men in specialty, shoveling, and freezer gangs can, at the option of the Employers, be shifted to any other work including all dock and car work in

Exhibit 1-A

order to fill out a shift. When so shifted, the penalty cargo rate shall not prevail.

(h) The Employers shall have the right to order back after an initial or any subsequent shift only such gangs as are needed to finish the work remaining. (This is intended to minimize the necessity of shifting men or gangs to other jobs or ships to fill out the 8-hour guarantee.) Such gang or gangs ordered back must be the gang or gangs which the Employers believe in good faith have the most work to do at their respective gear, and they are to finish the work, if any, at the gear of the gangs released at the end of the previous shift if ordered to do so. Under such circumstances the gear priority of the gangs released is suspended. When gangs are not ordered back under this rule they cannot be replaced by new gangs at that gear until the second subsequent comparable shift. This rule is not to be used as a subterfuge for firing gangs.

(i) The shifting of registered and limited registered men to fulfill the guarantee shall be carried out without bumping other men to create available work.

2. Accompanying the obligation placed upon the Employers to furnish 8 hours of work each shift is the obligation on the part of the men to shift from one job to another for the purpose of working a full shift when such move is ordered by the Employers.

3. The Union recognizes that late initial starts will occur and agrees that men will work ships with late initial starts. (See Paragraph B. 1. Note.)

Exhibit 1-A

4. The employers have the right to relieve hatches during meal hours.

[8] 5. Existing gear priority rules will be suspended or changed when necessary to facilitate shifting of men and gangs for the purpose of guaranteeing the full 8-hour work shift. "Center line" and "imaginary bulkhead" and similar practices which result in arbitrary division of work among gangs shall be eliminated.

6. Existing contract leeway provisions for finishing ship to shift (2 hours) or sail (3 hours) shall remain unchanged.

7. Men and gangs shall go to meals as directed by the Employer and shall return to complete a shift after a meal when a shift is extended for shifting or sailing.

**E. RULES AND EXAMPLES APPLICABLE TO SHIFTING
MEN AND/OR GANGS.**

1. Initial late start orders may be placed at the dispatch hall to work a ship and to shift to a second ship for a late start on the second ship when ordered to do so.

Note: The purpose of men being notified by orders at the hall at the time of dispatch is to know in advance that the ship they are being dispatched to is the second ship, with the first ship being worked as a fill-in job for the purpose of making 8 hours.

2. Men or gangs may be ordered to shift from a job or a ship that they have completed to a late start on another job or ship. Such men or gangs will be released at the end of the shift on the second ship and may be required to work no longer than the extended hours herein provided for, if such extended hours are necessary to complete the work on the second ship for shifting or sailing.

Exhibit 1-A

Such shifting of men or gangs may be accomplished without clearance through the dispatch hall.

3. Men or gangs may be ordered to shift from a job or a ship on which they have not completed their original assignment to permit a late start on another job or ship, or in order to fill out the 8-hour work guarantee, or in order to finish the second ship for shifting or sailing. These men or gangs will be ordered back to their original job during that shift or for the start of the next day's shift, and such shifting of men or gangs may be accomplished without clearance through the dispatch hall.

If the work on the second ship is of such amount as to require working the extended hours in order to permit the ship to shift or sail, the men or gangs will work up to but not beyond the end of such extended time.

4. Men or gangs may be ordered to shift from a job or a ship which they have not completed but where they have run out of available work because of delay in arrival of cargo, breakdown of equipment, etc., to another job or ship in order to complete the 8-hour guarantee, and they will be ordered to return to their original job to finish it. Such shifting of [9] men or gangs may be accomplished without clearance through the dispatch hall. (This rule also applies when a ship fails to arrive as scheduled.)

5. Gangs will have gear priority on only one ship during each shift and will be released to the dispatch hall at the end of any shift in which they have completed their work on the ship on which they had priority. (This does not negate D. 1. (h)).

6. There shall be no second or additional guarantee attached to turning to on new assignment after shifting.

Exhibit 1-A

F. ONE HOUR LEEWAY TO FINISH CAR WORK OR TRUCK WORK.

When dock work on cars or trucks is started but is incomplete at the regular quitting time, an extension or leeway of one hour to finish the job will be permitted, providing men are not sent to a meal.

G. GUARANTEE FOR GANGS THAT TRAVEL.

When gangs are travelled and, as a result, their starting time is such as to make it impossible to fill out the guarantee between 8 a.m. and 6 p.m., the guarantee shall be pay or work until 6 p.m., except for the meal hour. For example, if men arrive on the job at 9:30 a.m. following travel, then their guarantee will be 7½ hours.

H. MEAL HOUR.

1. The meal hour shall be between 11 a.m. and 1 p.m., that is, the noon meal hour can be at 11, 11:15, 11:30, 11:45 or 12 noon.
2. The night shift meal hour shall be at either 10 p.m. or 11 p.m. in those ports whose normal starting time is 6 p.m. and at either 11 p.m. or 12 midnight in those ports whose normal starting time is 7 p.m.
3. Men and gangs shall go to meals as directed by the Employer.

I. SMALL PORTS.

The full provisions of the 8-hour guarantee shall prevail in all ports. However, in small ports—6 gangs or less—it is understood that if these ports wish to make adjustments

Exhibit 1-A

in leeway for late starts because no alternative work is available to fill out the 8-hour guarantee, this can be done by mutual agreement at the local level providing there is advance approval by the Joint Coast Committee.

[10] NEW EQUIPMENT

It is recognized that the Employer has the right to select competent men for all operations. When new types of equipment are introduced in connection with cargo handling covered by the contractual definitions of work, such new equipment shall be operated by employees under ILWU contracts, with the understanding that competent men shall be made available by the ILWU, with adequate experience or training. This proposal shall not change the status quo as to assignment of other than ILWU workers on existing equipment.

VACATIONS

The present contract vacation provisions were amended as follows:

1. JURY DUTY VACATION ELIGIBILITY

Any registered man covered by the ILWU contracts who shall be summoned for jury duty shall be entitled to have his actual hours of attendance at court as juror be counted as qualifying hours for vacation eligibility. (Note: Actual hours in this instance are all hours at court, waiting to serve on a jury, or actually serving on a jury.)

2. Any registered Clerk or Longshoreman who has 25 qualifying years in the industry and is paid for 800 hours but less than 1344 hours in the preceding year, thus earning one week's vacation, shall receive an additional week of va-

Exhibit 1-A

cation. (Note: This leaves unaffected the 25-year man who works 1344 hours the previous year.)

WELFARE

The Trustees of the Welfare Fund having determined that sound policy requires that a balance of \$800,000 should be maintained (to meet two months' premiums covering existing benefits), it is agreed that at any time during the term of this Agreement that the Fund balance falls below \$800,000 as the result of maintaining present benefits, an additional employer contribution of 1¢ per manhour shall be made for such period as may be required to replenish or maintain such balance. The Trustees shall determine the time during which such additional 1¢ shall be paid, based upon the status of the Fund with relation to the \$800,000 balance formula.

PENALTY CARGOES

The following commodities were added to the list of commodities carrying a 10 cent penalty:

1. Tapioca flour when sacks are leaking or sifting.
2. Calcine coke.
3. Freshly painted lumber when paint is wet.

[11] It was agreed also that during the coming contract year the parties will study the entire penalty list with the intent of revising it to eliminate commodities where packaging or mode of handling has changed so as to remove the obnoxious features. Any disagreements will be resolved at the June, 1960 contract review.

PROTECTIVE CLOTHING AND DEVICES

It was agreed that where protective clothing or devices are currently being furnished, even though not specifically

Exhibit 1-A

required by the safety code, the Employers will continue to furnish them. At the local level the parties will re-examine this question in order to arrive at an orderly procedure for the issuance, safeguarding, and return of the items furnished by the Employers.

RELIEF PERIODS

It is recognized that employees are entitled to reasonable and necessary time off for relief. Relief periods shall be arranged so as to fall around the mid-point of the work period involved, having due regard for the continuity and nature of the work. The ILWU agrees there shall be specific contract language to prevent the abuse of such relief periods or their being used as a subterfuge to operate as a 4-on — 4-gone practice, or variations thereof, and to insure that men will observe specified times for starting, resuming and finishing work.

PORT WORKING AND DISPATCHING RULES AND
LOCAL AGREEMENTS

It was agreed, with regard to port working and dispatching rules that:

- 1) Any rules which conflict with or prevent the operation of the new contract provisions shall be changed.
- 2) Any other changes in port working and dispatching rules can be made only by mutual agreement.

With regard to local agreements with PMA or with PMA members (exclusive of Walking Boss Contracts) it was agreed:

- a) That any provisions of the Coast Agreement which are applicable to the local agreements shall be incorporated in the local agreements.

Exhibit 1-A

- b) That any provisions of the local agreements which are in conflict with the Coast Agreement shall be changed.
- c) Any other changes in local agreements can be made only by mutual agreement.

[12] LEGAL QUALIFICATIONS

The Pacific Maritime Association has made the agreements on mechanization and the 8-hour guarantee contingent upon satisfactory resolution of certain tax and legal problems. This has been agreed to.

In connection with mechanization, the PMA needs to be assured that employer contributions to the one million five hundred thousand dollar (\$1,500,000) Fund will be currently deductible for income tax purposes.

The PMA needs to be assured that the straight-time rate of pay is the regular rate under the Fair Labor Standards Act and there will be no obligation to pay overtime on overtime.

The Union has agreed to support the PMA in obtaining such assurances. Failure to obtain resolution of these problems would require renegotiation of these issues.

GOOD FAITH GUARANTEE

As an explicit condition of agreement, the parties exchanged commitments that the Agreement as amended will be observed in good faith. In answer to the Employers' demand for such a guarantee, the Union Negotiating Committee and Caucus unanimously voted to commit every local and every member to observe such commitment without resort to gimmicks or subterfuge. The Employers gave a similar guarantee of good faith observance on their part.

In order to implement this good faith guarantee, it was agreed that whenever the local grievance machinery

(Exh. 1-A, 12-13)

261a

Exhibit 1-A

becomes stalled or fails to work the matter can be referred at once by either party to the Coast Labor Relations Committee for disposition. This understanding applies with special force to issues arising with regard to mechanization under Section 14 of the Coast Agreement and Section 25 of the Clerks' Agreement, and to the application of the 8-hour guarantee. Any problems arising over changes in local working or dispatching rules because of the new contract provisions can be thus referred to the Coast level for prompt disposition.

LENGTH OF CONTRACT

The contract shall be for a period of three years, terminating June 15, 1962, with an opening on wages, mechanization and hours in June, 1960; and an opening the second year, June, 1961, on wages, hours, mechanization and paid holidays. If settlement is not reached by negotiations, either party may submit unresolved issues to the Coast Arbitrator.

[13] (The Union has agreed without commitment on either side that there shall be discussions regarding the problems of domestic carriers.)

Dated: August 10, 1959

PACIFIC MARITIME ASSOCIATION
on behalf of its members

/s/ J. PAUL ST. SURE

INTERNATIONAL LONGSHOREMEN'S
AND WAREHOUSEMEN'S UNION
on behalf of itself and all
Longshore and Marine Clerks
Locals in California, Oregon
and Washington

/s/ L. B. THOMAS

Exhibit 1-B

[1] (MEMORANDUM OF AGREEMENT
ON
MECHANIZATION AND MODERNIZATION
OCTOBER 18, 1960)

A. PROVISIONS FOR EFFICIENT OPERATIONS

1. (1) The Longshore and Clerk's Agreements and local agreements (exclusive of Walking Boss Agreements) shall be revised and amended in the manner set forth herein so as to eliminate restrictions in the contract and working rules, as well as in unwritten but existing Union unilateral restrictions and arbitration awards which interfere with the Employers' rights dealing with sling loads, first place of rest, multiple handling, gang sizes, and manning scales, so as to allow the Employers to:
 - a. Operate efficiently
 - b. Change methods of work
 - c. Utilize labor-saving devices
 - d. Direct the work through Employer representatives while explicitly observing the provisions and conditions of the Agreements protecting the safety and welfare of the employees and avoiding speed up. "Speed up" shall be understood to refer to an onerous workload on the individual worker. It shall not be construed to refer to increased production resulting from more efficient utilization and organization of the work force, introduction of labor-saving devices, or removal of work restrictions.
2. (2) It is the intent of this document that the contract, working and dispatching rules shall not be construed

Exhibit 1-B

so as to require the hiring of unnecessary men. The question of whether or not men are necessary shall be based on a determination of the number of men required to perform an operation in accordance with the provisions of paragraph A(1). Such determination shall take into account the contractual provisions for relief, the fact that during many operations all men will not be working at all times due to the cycle of the operation, but this shall not be construed to sanction such practices as four-on four-off or variations thereof.

3. The Employer may seek through the provisions of the contract machinery to change only those contract provisions, working and dispatching rules which are in [2] conflict with the provisions and intent of this document. Where changes are agreed upon at the Coast Committee level they shall go into effect. Where changes remain in dispute they shall be resolved by the contract machinery.

SLING LOAD LIMITS

4. *The sling load agreement shall be amended to provide as follows:*

5. 1. The sling load agreement shall continue to apply to all loads built by longshoremen where conditions, number of men on the dock and in the ship, and the method of operation are the same as when the sling load agreement was negotiated.

6. 2. In the case of all other commodities or operations where operations have changed or where new commodities or operations have developed, loads shall be as directed by the Employer, within safe and practical limits and without speed up of the individual. Any dispute arising with re-

Exhibit 1-B

gard to such operations shall be settled through the grievance machinery with the work continuing as ordered.

7. 3. An increase in the number of men man-handling cargo or the use of machinery to move or stow cargo on the dock or on the ship shall be considered a change in operations which permits the handling of loads larger than previous standards.

8. 4. Loads built by other than longshoremen or loads built by longshoremen under 2 or 3 hereof shall be skimmed or not skimmed as ordered by the Employer.

9. 5. Nothing herein limits the Union's right to raise the issue of onerousness of work through the grievance machinery.

PLACE OF REST AND MULTIPLE HANDLING

10. (1) There will be no multiple handling.

11. (2) Longshore work shall include the following dock work between the first and last place of rest (unless waived by the Union, in writing):

(a) High piling or breaking down high piles

(b) Sorting

(c) Movement of cargo on the dock or in a terminal, or to another dock, terminal or warehouse

(d) The removing of all cargo from longshore boards

[3] (e) The building of all loads on the dock.

12. The above work shall be performed when ordered by the Employer. Longshore work on the dock, as outlined in

Exhibit 1-B

this section, is left to the option of the Employer. The fact that such Employer option is provided for herein, does not require the Employer to perform such work, but Employers are hereby prohibited by this language from allowing others than Longshoremen to perform the work.

13. (3) If jurisdictional difficulties arise in the application of the above, whatever jurisdictional agreements are reached shall not result in multiple handling.

14. Section 1 of the Longshore Agreement, "Definition of Longshore Work", Paragraph (a) shall be amended by inserting the following language as a new paragraph following the words "companies parties to this Agreement.":

15. "The words 'first place of rest' in the preceding paragraph shall not be interpreted so as to require multiple handling of cargo on either discharge or loading operations or movement of cargo on the dock or in a terminal, or to another dock, terminal or warehouse, i.e., no cargo delivered to a terminal for loading on a ship, car or barge and no cargo arriving at a terminal by ship or barge and subsequently leaving a terminal shall require multiple handling by longshoremen except as required by the Employer.

16. "Cargo received on pallet, lift, or cargo boards, or as unitized or packaged loads, shall be considered as having fulfilled the 'first place of rest' requirement when unloaded from the carrier at a place designated by the Employer, and shall not be re-handled before moving to ship's tackle unless so directed by the Employer. Cargo received for shipment but neither palletized nor received as unitized or packaged loads and to be palletized before delivery to ship's tackle shall be palletized by longshoremen only (unless waived by the Union, in writing). Cargo discharged from a vessel on pallet, lift, or cargo boards or as packaged or

Exhibit 1-B

unitized loads shall be considered as having fulfilled the 'last place of rest' requirement, when it is dock stored just as it left the hatch. It may be removed by the consignee or his agent, without additional handling, unless de-palletizing is ordered or sorting is required by the Employer prior to such removal. After cargo has been placed on the dock after discharge from the vessel, any movement of the cargo to a railway car, any sorting on the dock, and any building of loads on pallet boards on the dock shall be done by longshoremen. This will permit the teamsters to load their trucks piece by piece from cargo boards after longshoremen have broken down piles and set loads to the tailgate, floor or loading platform.

[4] 17. "Longshoremen will load or discharge trucks only when directed to do so.

18. "High piling or breaking down high piles is longshore work. Outbound loads will be set down one lift high on the docks and then may be high piled only by longshoremen, if so required by the Employer. Inbound loads will be set down by longshoremen in lift loads suitable for placement on trucks."

GANG SIZES AND MANNING

19. Section 9 of the Pacific Coast Longshore Agreement, shall be amended to read as follows:

20. The minimum basic ship general break bulk cargo gangs shall consist of men as follows:

- A gang boss (in ports where such are used)
- A winch driver (two on single winches)
- A hatch tender
- Two (2) sling or front men
- Four (4) holdmen (including siderunners)

Exhibit 1-B

21. Except as hereinafter provided: (1) On loading operations the basic gang can be the minimum number of men for all operations when the loads are being landed in the vessel at their place of rest or being stowed thereafter by mechanical equipment.

22. (2) On discharge operations this basic gang can be the minimum number of men when the loads are being moved to the point of removal from the vessel by mechanical equipment or are ready for slinging without additional handwork except the placement of slings or similar devices.

23. When cargo is to be hand-handled, then two swing men shall be added to the basic gang for all discharge operations, and four swing men shall be added for all loading operations. *Exception:* When space and safety are the factors that dictate that only one load can be handled at a time, prior to the handling of the second load, then the basic gang can perform such handling providing it is to last for one hour or more.

24. When the cargo handling operation to be performed requires only a minimum basic gang, that gang may be used to rig, uncover and cover hatches without additional men, so as to avoid deadtime under the eight hour guarantee.

25. The flexibility to apply to such swing men as are called for herein (and to the second winch driver) shall be the same flexibility set forth in the August 10, 1959 Memorandum in connection with the 8-hour guarantee. Swing men, skilled or unskilled, and the second winch driver, shall not be added to the basic gang complement in order to have ship's time guaranteed. They shall have the [5] 8-hour guarantee and the right to callbacks

Exhibit 1-B

without favoritism. They may be released at the end of any shift when they are not needed to start the next shift.

26. The minimums set forth above can be supplemented in any numbers as ordered by the Employer, while needed, without precedent.

27. Other longshore work in connection with loading and discharging is to be performed as ordered.

28. The Employer shall be permitted to bring machinery and machine drivers into the hold and to swing out an equivalent number of hold men, provided four basic hold men are retained at all times.

29. If loads above contractual limits are to be moved manually, and additional men or machines are required to guarantee against onerous individual workload, and to maintain safety standards, they will be provided.

30. Manning for existing operations shall continue with the Employer having the right to ask for review of such manning through the contract machinery in the following situations:

31. 1. Where existing manning for general cargo operations, including packaged lumber and mixed operations of break bulk and unitized cargo, (other than hand-handled operations) exceed the minimum basic ship general break bulk cargo gang; provided, however, that such review shall not seek to reduce the manning below said minimum basic ship gang, and shall be based on a determination of necessary men as hereinabove defined.

32. 2. In the case of other existing operations, such review shall be based on a determination of necessary men

Exhibit 1-B

as hereinabove defined, and shall not be limited by the minimum basic ship general break bulk cargo gang structure.

33. When new methods of operation are introduced the Employer shall discuss the proposed manning with the Union. If agreement cannot be reached (at the Coast level) the Employers shall have the right to put their manning in effect, subject to final resolution through the contract machinery.

[6] 34. In existing operations, where changed methods have already been introduced which eliminate hand-handling of cargo on a piece-by-piece basis; or which eliminate hand-handling of units (as in cases of straight runs of unitized cargo, mechanically landed, lifted and stowed and vice versa); or which eliminate the need for hold men by removal of devices, (as in the case of chutes in scrap operation), the procedure of this paragraph shall apply.

35. Dock gang units shall continue while providing for flexibility in the use of dock gangs.

36. The same safeguards with respect to speed up, safety and welfare shall apply in the case of gang size and manning as in the case of sling loads.

37. If, during a shift, a change is made from a discharge to a loading operation, and the change requires additional men under the provisions of this section, if the Employer is unable to swing in men from ship or dock from his own employees, the hold men will work without additional men for a maximum of fifteen loads but not more than one hour.

Exhibit 1-B

**B. MODERNIZATION AND IMPROVEMENT FUND
PROVISIONS**

38. In return for a revised Longshore and Clerks' Agreement incorporating the provisions set forth in Paragraphs A and C "Provisions for Efficient Operations", PMA will establish a jointly trustee Fund as hereinafter provided. The administration and application of these revisions of the contract shall be subject to the grievance procedure at the Coast level.

39. 1. The Fund shall include the \$1.5 million accumulated prior to June 15, 1960, and will be supplemented by PMA contributions of \$5,000,000 per year for a period of five and one-half years. If at any time the maximum payments per year do not provide sufficient money to meet fully the guarantees and benefits, the guarantees and benefits shall be reduced proportionately.

40. 2. The Fund shall be segregated into two parts and used for the following purposes:

41. (a) For all present fully registered longshoremen and Clerks, minus attrition; a guarantee of payment for a specified number of hours of straight-time pay per week at the then current contract rate, computed on an annual basis. Such guarantee shall become operative only when hours fall below the agreed level due to reduced work opportunity resulting from changes as provided in Paragraph A hereof, but shall not apply to a drop in tonnage due to a decline in economic activity. Details of eligibility and administration to be negotiated.

[7] 42. (b) For all present fully registered longshoremen and Clerks, minus attrition; the types of benefits pro-

Exhibit 1-B

vided in Union Draft of 10/4/60 Paragraph (2) (b), Paragraphs (1) to (7) inclusive. The amounts of such benefits to be determined by the Union. (See Exhibit "A", attached.)

43. In regard to the benefit entitled "Mandatory Pensions", PMA-ILWU shall have joint control over application of early mandatory retirement. If the parties disagree, differences will be subject to arbitration.

C. GENERAL PROVISIONS

44. 1. The parties agree that they will abide by all terms and provisions of the collective bargaining agreements.

45. 2. The parties agree that should disputes arise under these agreements all men and gangs shall continue to work as directed by the Employer in accordance with the specific provisions of the Agreements and that such disputes shall be settled through the grievance machinery of the applicable contract. Only in cases of bona fide health and safety issues may a standby be justified. The Union pledges in good faith that health and safety will not be used as a gimmick.

46. 3. The Union agrees that the provisions of Section 16(f) relating to "Penalties for Work Stoppages, Pilferage, Drunkenness and Other Offenses" shall be observed, and that in the event of disagreement as to the imposition of penalties under the "independent procedure" at the Joint Port Labor Relations Committee level, the issue shall be processed immediately through the grievance procedure, and to the Area Arbitrator, if necessary. The hearing and investigation of grievances relating to penalties shall be given precedence, on an equal basis with discharges, over

Exhibit 1-B

all other business before the Joint Port or Joint Area Labor Relations Committees and before the Area Arbitrator.

47. The Union further agrees that the provisions of Section 7 (b) (3) relating to removal of Hiring Hall personnel for cause shall be observed, and that any charges brought under this sub-section shall be processed through the grievance procedure immediately and shall be given precedence, on an equal basis with penalties and discharges, over all other business before the Joint Port and Joint Area Labor Relations Committees and before the Area Arbitrator.

[8] 48. 4. The parties agree the basic purposes of the Fund shall be specifically incorporated in the Trust Agreement and further that either party may on 60 days notice request a joint review of the basic purposes of the Fund no more than twice during the term of the Trust Agreement, and that the initial review may not be requested prior to a date 18 months subsequent to the effective date of the Trust Agreement. If the parties cannot reach agreement at these reviews, unresolved items or disputes may be referred to the Coast Arbitrator for decision at the request of either party.

49. 5. In connection with the Modernization and Improvement Fund PMA needs to be assured that the Employer contributions to the Fund will be currently deductible for income tax purposes.

50. The Union agrees to support PMA in obtaining such assurances from the proper government agencies. Failure to obtain resolution of these problems would require renegotiation of these issues.

51. 6. Any contract provisions, working rules, dispatching rules, unilateral rules or arbitrator awards in conflict

Exhibit 1-B

with the provisions of this document shall be nullified, or changed to the extent necessary, in order that they shall not prevent the operation of this Memorandum of Agreement. Any disputes concerning the interpretation or application of this Memorandum of Agreement shall be determined under Coast Labor Relations Committee procedures. The parties, by agreement, may refer proposed changes which are of local significance only, to the Local area for negotiation. In the interest of uniformity, any such matter negotiated at the Area level must be approved at the Coast level before being put in operation. Any matter referred to the Area level and not resolved within 30 days thereafter shall automatically return to the Coast level, and if not resolved there shall be presented to the Coast Arbitrator for decision.

52. 7. Wherever applicable the foregoing paragraphs shall apply equally to longshoremen and clerks. The provisions of 16(f) and 7(b)(3) of the Longshore Agreement shall be incorporated in the Pacific Coast Master Clerks' Agreement.

53. 8. In the event that the Union or any Local fails or refuses to follow a Coast LRC or Arbitrator's ruling interpreting or applying the provisions of this document, or in the event of a work stoppage in any port or ports in violation of the provisions of this document, payments into the Fund shall be abated during the period of such failure, refusal or stoppage in the manner and amount hereinafter provided, and the total Employer obligation shall be reduced by such amount.

[9] 54. The method of determining the amount of abatement shall be as follows:

The total Employer obligation on an annual basis is at the rate of \$13,650 per day. This shall be the

Exhibit 1-B

maximum amount of abatement per day. Within this limit, the parties shall agree as to the amount to be abated on a daily basis in each instance of failure, refusal or stoppage, whether on a Coastwide, Area, or Port basis, and failing such agreement, the Coast Arbitrator shall make such determination.

D. DURATION

55. This Agreement shall become effective upon ratification by both parties and shall run to July 1, 1966.

E. AMENDMENTS TO BASIC LONGSHORE AND CLERKS AGREEMENTS

56. 1. The present Basic Coast Longshore and Master Clerks Agreements shall be extended to July 1, 1966 subject to annual reviews on June 15. Either party may ask review of any item in the Agreements with the exceptions of Mechanization and Modernization and Pensions.

57. 2. The Coast Labor Relations Committee shall decide upon an equitable formula for dealing with the question of offenses which have arisen under Section 16(f) during the term of the present contract in order to prevent the unreasonable cumulation of penalties into the term of the Agreement as extended.

58. 3. The issue of gear priority shall be referred to the Coast Labor Relations Committee in order to develop a coastwise rule. The Committee shall take into account the positions advanced by both parties in the current negotiations. Pending agreement on such coastwise rule, existing local rules shall continue to apply.

(Exh. 1-B, 9, 1 of Ex. A)

275a

Exhibit 1-B

59. 4. With regard to local agreements with PMA or with PMA members (exclusive of Walking Boss Contracts) it is agreed:

- a) That any provisions of the Coast Agreement which are applicable to the local agreements shall be incorporated in the local agreements.
- b) That any provisions of the local agreements which are in conflict with the Coast Agreement shall be changed.
- c) Any other changes in local agreements can be made only by mutual agreement.

60. 5. Pensions are reviewable under the terms of the Pension Agreement on July 1, 1961.

[1] EXHIBIT "A"

Note: This language from the Union proposal of October 4, 1960 sets forth the types of benefits contemplated under paragraph B 2(b) of the October 18, 1960 Memorandum of Agreement. Specific wording will be incorporated in the Trust Agreement.

2. (b) *Early Retirement, with Vesting, and Death Benefit:* For all present fully registered longshoremen and clerks, minus attrition; the types of benefits provided below. The amounts of such benefits to be determined by the Union.

- (1) A death benefit, after more than 5 and less than 15 years of pension credit service of \$220 monthly for 12 monthly payments, to be paid to his beneficiary.
- (2) After 15 years of pension credit service, accumulation of a vested right to a sum equal to 36×220 , and at age

Exhibit 1-B

65, with 25 years or more of service, the right shall be fully vested. If such a man dies or becomes disabled prior to reaching pension retirement, he shall receive, or his beneficiary, a proportionate amount, depending on years of service beyond 15, or the amount provided in (1) or (6) hereof, whichever is greater but in case of death no more than \$5,000.

(3) Normal retirement to continue at age 65 with 25 years of service, and with payment of lump sum equivalent in whole or on a monthly basis as preferred by the pensioner.

(4) *Voluntary Retirement* can be chosen at age 62 or thereafter with 25 years of service at the rate of \$220 per month, and such early retirement will consume all or a part of a man's vested share of this Fund prior to his 65th birthday. Any residue of the individual share would be payable to the individual in a manner determined by him.

(5) *Mandatory pensioning* can be made obligatory at age 64, 63 or 62 with 24, 23, or 22 years of service and with the same payments as in (4) above plus normal pension payments, if such mandatory retirement is mutually deemed necessary for the purpose of reducing the work force. Such mandatory requirement would of course follow mandatory retirement of men with 25 years of service and 65 years of age but not yet 68. The parties shall have joint control over application of early mandatory retirement. If the parties disagree, differences will be subject to arbitration.

(6) *For men who die after 15 years of pension credit service and prior to retirement*, beneficiaries shall receive \$5,000 in monthly payments of \$220.

(7) *For men who die while on normal or early pension* prior to the exhaustion of their vested interest herein, beneficiaries shall receive the residue in monthly payments of \$220 per month.

(Exh. 1-B, 1 of Annex.)
277a

Exhibit 1-B

[1] MEMORANDUM OF UNDERSTANDING

BETWEEN

PACIFIC MARITIME ASSOCIATION

AND

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION

Pursuant to the wage review of June 15, 1960, it is hereby agreed:

WAGES

LONGSHORE

The basic straight-time wage rate for men paid on a 6-hour day basis shall be increased by 8 cents per hour effective 8 a.m., Monday, June 13, 1960. This brings the basic straight-time rate to \$2.82 per hour and the overtime rate to \$4.23 per hour.

For special categories of Longshoremen historically paid on an 8-hour straight-time basis, the basic straight-time rate shall be increased by 9 cents.

CLERKS

The straight-time rate for Clerks is increased by 10½ cents per hour, bringing the rate to \$3.03½ straight-time and \$4.55 overtime. (This is the increase applicable to Longshoremen on an 8-hour basis, plus 1½ cents.)

WELFARE

The Employers' contribution to the ILWU-PMA Welfare Fund shall be increased by 2 cents per manhour, bringing the contribution to 14 cents per manhour straight and overtime, effective 8:00 a.m., July 4, 1960, and shall be

(Exh. 1-B, 1 of Annex.)

278a

Exhibit 1-B

further increased by one cent, to 15 cents per manhour,
effective 8:00 a.m., January 2, 1961.

Dated: 10/18 1960.

For

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION

/s/ H. R. B.

For:

PACIFIC MARITIME ASSOCIATION

/s/ J. Paul St. Sure

oein 29

10/18/60

(Exh. 1-C, 1-2)

279a

Exhibit 1-C

(ILWU-PMA SUPPLEMENTAL AGREEMENT ON
MECHANIZATION AND MODERNIZATION, DATED
NOVEMBER 15, 1961)

[1] ILWU-PMA SUPPLEMENTAL AGREEMENT

ON

MECHANIZATION AND MODERNIZATION

THIS AGREEMENT entered into as of the 1st day of January, 1961, by and between International Longshoremen's and Warehousemen's Union, representing employees, hereinafter defined, and on behalf of itself and all of its longshore and marine clerks' locals in California, Oregon and Washington, and Pacific Maritime Association, representing its member companies, hereinafter defined,

WITNESSETH:

WHEREAS, the parties hereto, after collective-bargaining negotiations, agreed on the terms and conditions to be incorporated in and amending the Pacific Coast Longshore Agreement and the Master Agreement for Clerks and Related Classifications, ratified January 10, 1961, and in and amending miscellaneous related agreements (i.e., Agreement for Carloaders in San Francisco Bay, between the Association, as hereinafter defined, and International Longshoremen's and Warehousemen's Union Local 10; Agreement for Carloaders in Los Angeles Harbor Area between the Association and International Longshoremen's and Warehousemen's Union Local 13; Portland and Vancouver Dock Agreement between the Association [2] and International Longshoremen's and Warehousemen's Union Locals 8 and 4; Portland Gear and Lockermen's Agreement between the Association and International Longshoremen's and Warehousemen's Union Local 8; Dock Workers' Agree-

Exhibit 1-C

ment for Port of Seattle between Waterfront Employers of Washington, on whose behalf the Association is acting, and International Longshoremen's and Warehousemen's Union Local 19; and Sweepers Agreement for the Los Angeles-Long Beach Harbor Area between the Association and International Longshoremen's and Warehousemen's Union Local 13, all of which miscellaneous related agreements were also ratified January 10, 1961), including particularly those set forth in a written Memorandum of Agreement on Mechanization and Modernization between the parties hereto, dated October 18, 1960 (hereinafter referred to as "Memorandum Agreement"); and

WHEREAS, said Memorandum Agreement, and particularly Sections A and C thereof, contains various provisions for increasing efficiency in operations through permitting utilization of labor-saving devices and eliminating restrictive work practices in the Pacific Coast shipping industry, the substance of which provisions have been made an integral part of said Pacific Coast Longshore Agreement, said Master Agreement for Clerks and Related Classifications, and said miscellaneous [3] related agreements; and

WHEREAS, said Memorandum Agreement and particularly Section B thereof, contains other provisions for creating, accumulating and administering a so-called Mechanization Fund in the sum of Twenty-nine Million Dollars (\$29,000,000) for the payment of certain benefits in consideration of the performance of said provisions for increasing efficiency in operations; and

WHEREAS, the parties hereto have now agreed upon the manner in which such Mechanization Fund is to be accumulated, administered and distributed and are desirous of formalizing such agreement,

Exhibit 1-C

Now THEREFORE, in consideration of the premises, the parties hereto agree as follows:

I. DEFINITIONS

The following terms where used in this Agreement, unless specifically provided to the contrary, shall have the following respective meanings and definitions:

1. *Union*: The International Longshoremen's and Warehousemen's Union, representing persons whose terms and conditions of employment as longshoremen or marine clerks, respectively, in California, Oregon and Washington, are governed by said Pacific Coast Longshore Agreement, said Master Agreement for Clerks and Related Classifications, or any of said miscellaneous related [4] agreements, and including all of its longshore and marine clerks' locals in said states.
2. *Association*: Pacific Maritime Association.
3. *Member Companies*: Companies who are presently, or hereafter become, members of the Association and are, or become, subject to said Pacific Coast Longshore Agreement, said Master Agreement for Clerks and Related Classifications, or any of said miscellaneous related agreements, or several of said collective-bargaining agreements, respecting the employment of "Employees" as that term is hereinafter defined in Section 4 of this Article 1.
4. *Employees*: All longshoremen or marine clerks and persons within related classifications who were on January 1, 1961, or during the term of this Agreement become, fully registered within the meaning and under the provisions of said Pacific Coast Longshore Agreement, said Master Agreement for Clerks and Related Classifications, or said miscellaneous related agreements, respectively, and whose

Exhibit 1-C

terms and conditions of employment as longshoremen or marine clerks, respectively, in California, Oregon and Washington are governed thereby.

[5] 5. *Employers:*

(a) Companies who are Member Companies of the Association as of the date of this Agreement or thereafter become Member Companies of the Association and who employ directly Employees under said Pacific Coast Longshore Agreement, said Master Agreement for Clerks and Related Classifications, any of said miscellaneous related agreements, or several of any of said collective-bargaining agreements.

(b) Companies who, although not Member Companies of the Association, employ directly any Employees, through any of the hiring halls jointly maintained by the Association and the Union, under arrangements mutually acceptable to the Association and the Union.

6. *Principals:* Member or non-Member Companies of the Association who do not employ directly Employees but who obtain stevedoring, terminal, or similar or related services under contracts with Employers in which services of Employees are employed.

7. *Companies:* Includes corporations, unincorporated associations, partnerships, joint ventures, estates, trusts and individuals.

8. *Contributions:*

(a) Assessments required of Employers [6] who are Member Companies under arrangements adopted by the Association, pursuant to its by-laws, in order to effectuate this Agreement;

Exhibit 1-C

(b) Appropriate charges required of Employers who are not Member Companies under arrangements established by and mutually acceptable to the Association and the Union.

9. *Mechanization Fund:* The fund to be created pursuant to Article II of this Agreement while in the possession of the Association.

10. *Vestees:* Employees who have established their eligibility pursuant to Schedule B hereof, or amendments thereto, for the vesting benefit available under the "Plan," as that term is hereinafter defined in Section 12 of this Article I.

11. *Agreement:* This ILWU-PMA Supplemental Agreement on Mechanization and Modernization.

12. *Plan:* This Agreement, the Trust Indentures and Trusts established thereby for implementation of the Agreement, the ILWU-PMA Welfare Fund to the extent the same is used in connection with this Agreement, and arrangements for assessment and charges for Contributions.

[7] II. CREATION OF MECHANIZATION FUND

The Member Companies of the Association shall establish or cause to be established a Mechanization Fund in the following amount and manner:

1. *Amount and Rate of Accumulation.* Commencing January 1, 1961, and continuing for a period of five and one-half years ending June 30, 1966, a Mechanization Fund shall be established, subject to the provisions of Section

Exhibit 1-C

3 of Article V hereof, at the rate of Six Million Five Hundred Thousand Dollars (\$6,500,000) during the first year, Five Million Dollars (\$5,000,000) during each of the next four years, and Two Million Five Hundred Thousand Dollars (\$2,500,000) during the next succeeding six months, for a total of but not exceeding Twenty-nine Million Dollars (\$29,000,000).

2. *Contributions.* (a) Employers who are Member Companies shall make Contributions to the Mechanization Fund in the amounts and at the rates set forth in Section 1 of this Article II, and Principals who are Member Companies shall be responsible therefor to the extent the Association determines pursuant to its by-laws and in its sole discretion. As to Member Companies, the Association shall have and hereby reserves exclusive power to adopt and change the method, [8] manner and amount of collecting Contributions for the Mechanization Fund from Employers and to fix the responsibility therefor of Principals, provided that it may not, without consent of the Union, modify the annual rate at which the Mechanization Fund is to be accumulated as set forth in Section 1 of this Article II.

(b) Employers who are not Member Companies of the Association shall contribute to the Mechanization Fund at comparable rates and in a like fashion as other Employers under arrangements to which the Association and Union consent in writing; the amount of the Mechanization Fund to be accumulated by Member Companies under this Agreement shall be reduced by the amount to be contributed thereto under such arrangements by Employers who are not Member Companies, unless the Association and Union provide otherwise by written agreement acknowledged as being an integral part hereof.

Exhibit 1-C

(c) Nothing herein contained shall preclude any Employer from securing a guaranty from any Principal obtaining stevedoring, terminal, or similar or related services from such Employer under contract between such Employer and Principal, respecting the responsibility [9] of such Principal for any Contribution such Employer is obligated to pay hereunder on account of such services so furnished such Principal by such Employer.

3. Interests in Mechanization Fund.

(a) Neither the Union nor Employees shall have any right, title or interest, or any claim whatsoever, legal or equitable, in or to any portion of the Mechanization Fund.

[9] (b) No Trustee of any Trust employed for the effectuation of the Plan, or any beneficiary thereof, shall have any right, title or interest, or any claim whatsoever, legal or equitable, in or to any portion of the Mechanization Fund, except as is specifically set forth in and granted under this Agreement or any such respective Trust.

(c) The Association's status, including its right, title and interest, respecting the Mechanization Fund or any portion thereof, shall be only as a collecting agent for the various Employers making Contributions thereto for transferral to the respective Trusts, employed for effectuation of the Plan, of all or any portion of the Mechanization Fund coming into its possession in the form of Contributions.

[10] (d) No Employer, or its successor in interest, shall have any right, title or interest, or any claim whatsoever, legal or equitable, with respect to Contributions to the Mechanization Fund within the possession of the Association which were made by another Employer, and the interest of an Employer, or its successor in interest, in the Mechanization Fund shall be limited to that pro

Exhibit 1-C

rata portion thereof attributable to Contributions made by it, computed on a "first-in, first-out" principle, and which have not already been transferred by the Association to the respective Trusts employed for the effectuation of the Plan.

4. *Abatement.* (a) In the event that the Union or any persons represented by it (i) fails or refuses to follow any decision or ruling of the Coast Labor Relations Committee or any Arbitrator provided for in said Pacific Coast Longshore Agreement, Master Agreement for Clerks and Related Classifications, any of said miscellaneous related agreements, and this Agreement, interpreting, applying, or enforcing any provision of this Agreement (excluding the provisions of paragraph (b) of Section 1 of Article VI hereof) or of the provisions of [11] any of said collective-bargaining agreements which are specifically referred to in paragraph (c) of Section 1 of Article VI hereof, or (ii) engages in or permits a work stoppage in any port or ports covered by any of said respective collective-bargaining agreements in violation of any provisions of this Agreement (excluding the provisions of paragraph (b) of Section 1 of Article VI hereof) or the provisions of any of said collective-bargaining agreements which are specifically referred to in paragraph (c) of Section 1 of Article VI hereof, all payments of Contributions which Employers are otherwise obligated to make into the Mechanization Fund or to the Association, as collecting agent for such purpose, shall be abated during the period of any such failure, refusal or work stoppage in the manner and amount hereinafter provided in paragraph (b) of this Section 4 and the total obligation respecting such payments of Employers and Principals, as set forth in this Article II of this Agreement, shall be reduced by such amount, effective

Exhibit 1-C

concurrently with the period of any such failure, refusal or work stoppage.

[12] (b) It is mutually agreed for the purposes of this Section 4 of this Article II that on an annual basis said obligation accumulates at the rate of Thirteen Thousand Six Hundred Fifty Dollars (\$13,650) per day, and it is mutually agreed that this sum shall be the maximum amount of the abatement allowable per day under paragraph (a) of this Section 4. In the event of any such failure, refusal or work stoppage, the Association and the Union shall promptly negotiate in an attempt to agree as to the amount, computed on a per diem basis, respecting each instance of any such failure, refusal or work stoppage, irrespective of whether any such event occurs on a Coastwide, Area or Port basis. If the Association and the Union after a reasonable period of negotiations fail to reach agreement on any such matter, the issue or issues in dispute may, at the request of either party hereto, be referred to arbitration for final decision under and in accordance with the provisions of Section 4 of Article VI hereof.

III. FUNCTION OF THE ASSOCIATION

1. *Status.* The Association shall be, and hereby is, appointed the collecting agent acting for and on behalf of Employers in accumulating [13] their respective Contributions to the Mechanization Fund, and the Association shall act as a conduit for transferring the whole, or portions, of the Mechanization Fund received by it to the respective Trusts employed for effectuation of the Plan as provided in this Agreement.

[13] 2. *Limitation.* The Association shall not commingle Contributions by Employers to the Mechanization

Exhibit 1-C

Fund with the Association's general funds or any other funds or trusts within its possession, and the Association shall not act as a repository of Contributions by Employers to the Mechanization Fund beyond such time as may be reasonably necessary to perform accounting and banking transactions required for effectuation of the Plan with due regard for the respective tax years of Employers who have made such Contributions.

3. *Authority.* The Association is hereby authorized to act as such collecting agent for Employers and, as such, to take all reasonable action necessary to compel Employers and Principals who are Member Companies to comply with their respective obligations or responsibilities under the Plan.

[14] 4. *Default.* (a) In the event of an Employer's default in making its Contributions required under the Plan, the Association shall report such default to the Union and certify the extent of such default to the Trustees of the Trusts to be employed pursuant to Article IV hereof.

(b) In the case of such a default by an Employer who is not a Member Company of the Association, such Employer shall be denied further use of any of the dispatching halls jointly maintained by the Association and the Union, and any other facilities maintained under said Pacific Coast Longshore Agreement, Master Agreement for Clerks and Related Classifications, or any of said miscellaneous related agreements, until such default is corrected; the Union and the Association shall take all reasonable and available steps to compel either an Employer or a Principal who is not a Member Company to comply with its obligations under the Plan; and neither Member Companies, the Association, nor the Union shall be liable or responsible to make good losses incurred by reason of any such default.

Exhibit 1-C

(c) In the case of any such default [15] under the Plan by an Employer who is a Member Company and a failure by the Association after a reasonable period to compel such Employer to correct such default, the Trustees of the respective Trusts to be employed pursuant to Article IV hereof shall be empowered and authorized in their name and capacity to commence and pursue such legal remedies as may be appropriate and available to enforce whatever rights under the Plan they may have in the premises against such Employer. In a like manner said Trustees shall be empowered and authorized to proceed in the case of any default under the Plan by an Employer or Principal who is not a Member Company and a failure by the Union and Association after a reasonable period to compel such Employer or Principal to correct the default.

(d) Principals shall be responsible for assuring themselves that any and all moneys paid by them under the Plan to Employers are in turn paid as Contributions by such Employers to the Association as collecting agent, and if any such Principal is a Member Company, any responsibility it may have under this Agreement in such connection shall not be satisfied until [16] such Contribution is received by the Association as collecting agent.

(e) The Association agrees to undertake to collect the obligations owed by any defaulting Employer who is a Member Company hereunder (including the institution of legal action which the Association is hereby empowered to undertake), and if the Association fails, the remaining Member Companies of the Association shall be required to make good any loss resulting from the default of such Employer.

Exhibit 1-C

IV. ADMINISTRATION OF MECHANIZATION FUND

1. *Establishment of Trusts.* The benefits described in Article V and Schedules A, B and C hereof, shall be made available to Employees eligible therefor as beneficiaries of three separate, independent and irrevocable Trusts, as follows:

(a) Death and Disability Benefits. (1) Death and disability benefits described in Article V hereof and the attached Schedule A, and any amendment thereto, shall be made available to eligible Employees under the Declaration of Trust of the ILWU-PMA Welfare Plan, as amended, which Plan and Trust established thereunder have been, or shall [17] be, amended by the Union and Association to the extent necessary to implement this Agreement.

(2) The Association, as collecting agent for Employers, shall from time to time transfer from Contributions received by it for the Mechanization Fund to the Trustees of the ILWU-PMA Welfare Fund, as so amended, sufficient moneys for the purpose of providing for the death and disability benefits provided for by said Article V, Schedule A, and any amendment thereto.

(b) *Vesting Benefit.* (1) The Vesting Benefit described in Article V hereof and the attached Schedule B, and any amendment thereto, shall be made available to Employees eligible therefor under an irrevocable trust established by the Association and Union under the laws of the State of California to be known as the ILWU-PMA Vesting Benefit Trust, which Trust shall be administered by six (6) Trustees, three (3) of whom shall be designated by the Union and a like number by the Association, who [18] shall be empowered to discharge their responsibilities under the Plan.

Exhibit 1-C

(2) The Trustees of said Trust shall maintain lists of Vestees and shall regularly and periodically report to the Association during each calendar year while the Plan is in effect the extent of the Trust's monthly obligations to the Vestees and designees.

(3) The Association as collecting agent for Employers, shall transfer from Contributions received by it for the Mechanization Fund to said Trustees only such moneys as are necessary to enable them to discharge obligations owed to Vestees and designees, to pay for necessary and reasonable administration expenses which have been incurred by said Trustees in administering the ILWU-PMA Vesting Benefit Trust and to pay taxes as hereinafter provided. The Association shall not, in any event, transfer from the Mechanization Fund any moneys to the Trustees of the ILWU-PMA Vestng Benefit Trust, which are not [19] required by said Trustees for immediate payment of such obligations, administration expenses or taxes which are currently due and owing by said Trustees.

(4) Upon receipt of such moneys from the Association, said Trustees shall immediately use the same for payment of such obligations, administration expenses or taxes which are currently due and owing by said Trustees.

(c) *Supplemental Wage Benefit.* (1) The Supplemental Wage Benefit, described in Article V hereof and the attached Schedule C and any amendment thereto, shall be made available to Employees eligible therefor under an irrevocable trust established by the Association and Union under the laws of the State of California to be known as the ILWU-PMA Supplemental Wage Benefit Trust, which Trust shall be administered by six (6) Trustees, three (3) of whom shall be designated by the Union and a like number by the Association, who shall be empowered to discharge their responsibilities under the Plan.

Exhibit 1-C

[20] (2) The Association, as collecting agent for Employers, shall transfer promptly from Contributions received by it for the Mechanization Fund to the ILWU-PMA Supplemental Wage Benefit Trust, moneys to be held, administered and used for the payment of supplemental wage benefits to Employees eligible therefor, as set forth in Article V hereof and the attached Schedule C, and any amendments thereto and for payment of administration expenses and taxes as hereinafter provided.

2. *Interests in Trusts.* (a) The transfer of moneys from the Mechanization Fund by the Association to the Trustees of the ILWU-PMA Welfare Fund, ILWU-PMA Vesting Benefit Trust, or ILWU-PMA Supplemental Wage Benefit Trust, respectively, shall be final and irrevocable, and neither the Association, any Employer, any Principal nor the Union shall have any right, title or interest, or any claim whatsoever, legal or equitable, in any moneys so transferred.

(b) No Employee or beneficiary, or their designees, of any of said Trusts shall have any right, title or interest, or any claim whatsoever, [21] legal or equitable, in or to the funds so transferred from the Mechanization Fund to the ILWU-PMA Welfare Fund, ILWU-PMA Vesting Benefit Trust, or ILWU-PMA Supplemental Wage Benefit Trust, respectively, except as provided in paragraphs (c), (d) and (e) of Section 2 of this Article IV.

(c) Employees, or their designees, eligible under this Agreement for death or disability benefits provided by this Agreement shall be entitled, upon compliance with the procedures established by the Trustees of the ILWU-PMA Welfare Fund in connection with the payment of benefits generally available under said Fund, to obtain payment of death or disability benefits in the amount provided by this

Exhibit 1-C

Agreement and to the extent that the Association has transferred, or arranged for transfer of, such moneys from the Mechanization Fund to such Trustees; each such Employee, or his designee, shall be limited to enforcing his rights under the Plan by proceeding against said Trustees and the ILWU-PMA Welfare Fund.

(d) The interests and rights of each Vestee, or his designee, in such moneys transferred from the Mechanization Fund in accordance with the request of the Association by the Trustees of [22] the ILWU-PMA Vesting Benefit Trust for payment of obligations owed thereunder to Vestees and designees shall be limited to such Vestee's or designee's pro rata share thereof, and each Vestee, or his designee, shall be limited to enforcing his rights under the Plan by proceeding against said Trustees and the ILWU-PMA Vesting Benefit Trust.

(e) Employees eligible under this Agreement for supplemental wage benefits provided by this agreement, upon compliance with the procedures to be established by the Trustees of the ILWU-PMA Supplemental Wage Benefit Trust in connection with the payment of said benefits, shall be entitled to obtain payment of said benefits, and each such Employee shall be limited to enforcing his rights under the Plan by proceeding against said Trustees and the ILWU-PMA Supplemental Wage Benefit Trust.

(f) Any Employee or designee of an Employee or Vestee, who is ineligible to receive a death, disability, vesting, or supplemental wage benefit shall have no rights or claims against any of the aforesaid Trusts, Trustees thereof, the Association, its Member Companies, the Union, or any of the officers, members, or agents of any of them.

(g) The interests of the Trustees of each of the aforementioned Trusts shall be limited [23] to the property under their respective administrations and shall not extend

Exhibit 1-C

to that property which is subject to another Trust for payment of the benefits provided under such other Trust.

3. *Limitations on Liability.* Neither the Association, any Employer, any Principal, nor the Union shall be liable or responsible for any losses, occasioned by misdelivery to, or misuse by, or misfeasance of any Trustee of any of said respective Trusts, of moneys transferred to such Trustees by the Association, notwithstanding that the moneys available to any such Trust from the Mechanization Fund will be insufficient for payment of the benefits under the Plan.

4. *Arbitrator.* Each of the aforementioned Trusts shall contain provisions for the appointment of an impartial Arbitrator to resolve whatever deadlocks, if any, may occur between the Trustees from time to time, as required by the Labor Management Relations Act, as amended.

5. *Powers and Duties of Trustees.* (a) The Trustees of each of the aforementioned Trusts may demand payment by the Association from Contributions received by it for the Mechanization Fund of such moneys to which the Trusts under their respective administrations may be entitled under [24] this Agreement and may proceed at law or equity to enforce such demand if the Association fails to make any such payment within a reasonable period.

(b) The Trustees of each of said respective Trusts are hereby empowered to enforce the rights derived hereunder by the Trust under their respective administrations against any Employer or Principal to the extent that the Association certifies to such Trustees that an Employer or Principal is in default of its obligations or responsibilities under the Plan, and such Trustees may proceed at law or equity or under the bankruptcy laws to enforce such rights.

Exhibit 1-C

(c) The Trustees of each of the aforementioned Trusts shall be authorized to employ the services of an Administrator to the extent such respective Trustees deem such services necessary.

(d) The Trustees of each of the aforementioned Trusts shall make, or cause to be made, all reports required of such Trustees and any Administrator employed by them, the Union, the Association, Principals, Employers or of any of their agents, officers and representatives under the Labor Management Relations Act, as amended, Labor Management Reporting and Disclosure Act of 1959, The Welfare and Pension Plans Disclosure [25] Act, and the laws of the State of California.

(e) The Trustees of each of the aforementioned Trusts shall make, or cause to be made, all reports of payroll and withholding taxes required by reason of disbursements from the Trusts under their respective administrations. The Trustees shall pay all such taxes directly, or, to the extent governing law requires that such reports and taxes be made or paid by an Employer, said Trustees shall provide such Employers with the necessary information for such reports and with moneys from their respective Trusts for payment of such taxes for which Employees are primarily liable, and the Association shall provide such Employers with moneys from the Mechanization Fund for payment of such taxes for which Employers are primarily liable.

(f) The Trustees of each of the aforementioned Trusts shall maintain or cause to be maintained, or provide Employers with information for making and maintaining, all records required under the Fair Labor Standards Act, as amended, and any other law of the United States or the State of California applicable to the Plan.

Exhibit 1-C

V. BENEFITS

1. *Utilization of Fund.* (a) Subject to the [26] provisions of paragraphs (b) and (c) of this Section 1 of Article V, the moneys transferred from the Mechanization Fund by the Association to said respective Trusts shall be used to provide the death and disability benefits described in Schedule A hereof; to provide the vesting benefits described in Schedule B hereof, and to provide the supplemental wage benefits described in Schedule C hereof to Employees, or their designees, who are respectively eligible therefor in accordance with the provisions set forth in each of the said respective schedules and who comply with the procedures adopted by the Trustees of each of said respective Trusts in connection with the administration of their Trusts, subject to any amendment to this Agreement or said schedules which are adopted by the parties hereto pursuant to this Agreement.

(b) The respective Trustees of the ILWU-PMA Welfare Fund, ILWU-PMA Vesting Benefit Trust, and ILWU-PMA Supplemental Wage Benefit Trust may also use the moneys transferred by the Association from the Mechanization Fund to their respective Trusts for the payment of administration expenses of their respective Trusts or of any taxes attributable to benefits paid under their respective Trusts.

(c) The Association, on account of the respective Employers, may use that portion of the [27.] Mechanization Fund required for payment of such payroll taxes as the respective Employers may incur either by reason of transfer by the Association of their respective Contributions to the Mechanization Fund to any of the Trusts employed to effectuate the Plan or by payment of benefits by said Trusts.

Exhibit 1-C

2. *Allocation of Fund.* (a) Unless otherwise mutually agreed in writing by the Association and Union and subject to the provisions of paragraphs (b) and (c) of Section 1, and the provisions of Section 3, of this Article V, a total of at least Eleven Million Dollars (\$11,000,000) of the Mechanization Fund shall be allocated during the term of the Plan to the ILWU-PMA Supplemental Wage Benefit Trust to provide for the supplemental wage benefits described in said Schedule C or any amendment thereof; said sum shall be accumulated at the rate of Two Million Dollars (\$2,000,000) per year, unless the remaining portion of the Mechanization Fund available in any year for payment of vesting benefits then due and owing Vestees under the Plan is insufficient therefor, in which case said rate for accumulation of said sum may be lower for such year provided the parties hereto shall, as required by the provisions of paragraph (c) of this Section 2 of Article V hereof, make appropriate provision for the accumulation during [28] the term of the Agreement from Contributions to the Mechanization Fund of said total sum of Eleven Million Dollars (\$11,000,000). Subject to the provisions of paragraphs (b) and (c) of Section 1, of paragraphs (b) to (d), inclusive, of this Section 2, and of Section 3, of this Article V, the remainder of the Mechanization Fund shall be used to provide for the death and disability benefits or vesting benefits, or both, respectively described in said Schedules A and B, or any amendments thereof.

(b) No portion of the Mechanization Fund shall be transferred to the Trustees of the ILWU-PMA Vesting Benefit Trust except such portion which may be required by such Trustees for immediate payment of vesting benefits due and owing to Vestees and designees, current administration expenses or applicable withholding or payroll taxes, or both.

Exhibit 1-C

(c) Whenever it should appear to either party hereto that the total sum of Eleven Million Dollars (\$11,000,000) to be allocated for supplemental wage benefits will not be accumulated during the term of the Agreement from Contributions by Employers to the Mechanization Fund if death and disability benefits and vesting benefits are continued in the amounts then provided by said Schedules A and B, or any amendment thereto, then, to whatever [29] extent is necessary to assure said accumulation, the benefits provided for in Schedule A shall first be decreased, deferred or eliminated in their entirety and thereafter the benefits described in Schedule B shall be decreased, deferred or eliminated in their entirety, as the Union and Association in each such instance may agree; provided, however, a Vestee, or his designee, who has not received full payment of the amount of the vesting benefit available under the Agreement and Schedule B hereof as of the date such Vestee removed, or was compelled to remove, himself from the active work force shall be entitled to full payment thereof; the designee of an Employee who has not received full payment of the death benefit available under the Agreement and Schedule A hereof as of the date such Employee retires and qualifies therefor shall be entitled to full payment thereof; or an Employee, or his designee, who has not received full payment of the disability benefit available under said Schedule A as of the date such Employee is classified as totally disabled shall be entitled to full payment thereof; provided, further, said unpaid portion of vesting benefit, death benefit, or disability benefit, as the case may be, may not be decreased or eliminated unless there will be insufficient moneys accumulated by [30] Contributions from Employers to the Mechanization Fund, pursuant to the provisions of Section 2 hereof, in which case all said unpaid portions shall be appropriately decreased, and eliminated, if necessary, to equalize the total benefits pay-

(Exh. 1-C, 30-31)

299a

Exhibit 1-C

able to such Vestees, designees, or Employees, respectively, but such Vestee, designee or Employee shall never be required to repay any benefit or portion thereof theretofore paid in accordance with the Plan.

(d) Member Companies shall not, in any such event, be required to increase the amount of Contributions to, or accelerate the rate of accumulation of, the Mechanization Fund.

3. *Reallocation and Extension.* (a) If it appears to the Association from the regular and periodic reports required by it of the Trustees of the ILWU-PMA Welfare Fund and the ILWU-PMA Vesting Benefit Trust as to the immediate and projected needs of their respective Trusts for sufficient moneys to provide benefits then available under such respective Trusts in accordance with the Plan, that the portion of the Mechanization Fund allocated under Section 2 of this Article V during any calendar year to provide for death and disability benefits or vesting benefits, or both, will exceed such needs of either or both of said Trusts, then the Association [31] in its sole, absolute and unreviewable discretion, may during such calendar year either (1) decrease the annual rate at which the Mechanization Fund is to be accumulated pursuant to Article II hereof notwithstanding the provisions of paragraph (a) of Section 2 thereof, or (2) transfer to the ILWU-PMA Supplemental Wage Benefit Trust such excess portion of the Mechanization Fund accumulated during such calendar year, unless the Association has theretofore transferred from the Mechanization Fund to said Trust pursuant to the terms of this Agreement a total of Eleven Million Dollars (\$11,000,000), in which case the Association, only with the concurrence of the Union and subject to the provisions of paragraph (b) of this Section 3 of Article V, may transfer from the Mechanization Fund said excess portion to the

Exhibit 1-C

ILWU-PMA Welfare Fund for use by the Trustees to provide any of the benefits available under the ILWU-PMA Welfare Plan or to the ILWU-PMA Supplemental Wage Benefit Trust.

(b) Notwithstanding any other provision of this Agreement, when it appears to the Association, that vesting benefits will be payable, subsequent to June 30, 1966, to Employees, or their designees, becoming Vestees on or before said date, then the Association may decrease the annual rate [32] at which the Mechanization Fund is to be accumulated pursuant to Article II hereof by such amount and for such year or years as the Association in its sole, absolute, and unreviewable discretion determines is necessary to allow future accumulations, as hereinbelow provided, for payment of such vesting benefits to such Vestees, or their designees, and the Association shall, subsequent to June 30, 1966, as moneys are required by the ILWU-PMA Vesting Benefit Trust for payment of such vesting benefits, accumulate the same by Contributions of Employers to the Mechanization Fund for transfer to said Trust, pursuant to the terms of this Agreement.

(c) Neither the provisions of paragraph (a) nor (b) of this Section 3 of Article V shall be construed as requiring the Member Companies to accumulate under this Agreement more than a total of Twenty-nine Million Dollars (\$29,000,000) in the Mechanization Fund or as relieving the Member Companies from accumulating in the Mechanization Fund less than said total sum and, if said total sum has not been accumulated and transferred to the respective Trusts to be employed for effectuation of the Plan by June 30, 1966, or when payment of the last vesting benefit to a Vestee, or his designee, has been made or provided for hereunder, whichever [33] date is later, the balance of said total sum shall be accumulated in the

(Exh. 1-C, 33-34)

301a

Exhibit 1-C

Mechanization Fund and used as the Union and Association may then mutually agree.

(d) Whenever conditions require the Association to exercise the powers granted to it by this Section 3 of Article V hereof, the Association shall at all times inform the Union as to the provisions which the Association intends to make or has made to provide for the collection in the future of such portion of the annual Contributions to the Mechanization Fund which has been deferred by reason of exercise of the powers granted to the Association by this Section 3.

4. *Restriction on Use.* If the portions of the Mechanization Fund transferred to the respective Trustees of the ILWU-PMA Welfare Fund and of the ILWU-PMA Supplemental Wage Benefit Trust have not been expended during the term of this Agreement for the benefits provided for under said respective Trusts, the balance of either or both of said respective Trusts shall be used in such manner as the Association and Union mutually agree in writing, but no part of either said balances shall inure to the benefit of the Union, Association, Employers or Principals, and said balances shall be used only to provide comparable benefits to Employees, their [34] families or dependents, in accordance with the basic intent and purpose of the Plan, subject to a prior determination by the Internal Revenue Service that tax consequences attendant with such use are consistent with or are not substantially different than those set forth in the rulings affecting the Plan which were theretofore obtained.

VI. GENERAL PROVISIONS

1. *Integration of Agreements.* (a) The provisions of Section B and applicable provisions of Paragraphs 1, 4, 5,

Exhibit 1-C

6, 7 and 8 of Section C of said Memorandum Agreement are hereby acknowledged as being incorporated in this Agreement and all other provisions of said Memorandum Agreement are hereby acknowledged to have been incorporated in said Pacific Coast Longshore Agreement, said Master Agreement for Clerks and Related Classifications, said miscellaneous related agreements, or several of any of said collective-bargaining agreements. Accordingly, said Memorandum Agreement has been superseded in the manner indicated and shall no longer have any force and effect.

(b) The Association and the Union agree that they will abide by all terms and provisions of said Pacific Coast Longshore Agreement, said Master Agreement for Clerks and Related Classifications, [35] and said miscellaneous related agreements.

(c) The Association and the Union each, on behalf of itself and the respective parties represented by it, agree that the provisions of said Memorandum Agreement identified in paragraph (a) of this Section 1 of Article VI as not being incorporated in this Agreement but as having been incorporated in said Pacific Coast Longshore Agreement, said Master Agreement for Clerks and Related Classifications, said miscellaneous related agreements, or several of any of said collective-bargaining agreements, are an integral part of this Agreement, the violation of which by the Union and said parties represented by it shall constitute a violation of this Agreement entitling the Association to invoke the Abatement provision as set forth in Section 4 of Article II hereof.

2. *Incorporation.* Schedules A, B and C hereof, and any subsequent amendments thereof, are incorporated in this Agreement as integral parts hereof; are to be construed and applied consistently with the other provisions

Exhibit 1-C

hereof; and terms used therein shall have the same meaning as similar terms used herein.

3. *Amendment and Review.* Except as expressly provided in this Agreement, the Union and Association by their mutual agreement in writing may at any time [36] amend, modify or delete any provisions of this Agreement or of the Trusts to be employed to effectuate the Plan. Further, either the Union or Association may, each, on not more than two occasions during the term of this Agreement, but not before July 1, 1962, request a review of the basic purposes of the Plan and propose modifications thereto, and, if said parties are unable to agree as to such modifications after a reasonable period of negotiations, either party may request the issue or issues in dispute to be referred for final decision to the Coast Arbitrator, or other Arbitrator appointed in accordance with the provisions of Section 4 of this Article VI; provided that, the provisions of Section 1 of Article II hereof, relating to the total amount of the Mechanization Fund and the annual rate of accumulation thereof, of Section 4 of Article II hereof, relating to abatement of Contributions, and of Section 2 of Article V hereof, relating to the allocation of a minimum of Eleven Million Dollars (\$11,000,000) of the Mechanization Fund to the ILWU-PMA Supplemental Wage Benefit Trust, shall not be subject to review, modification or arbitration except by mutual agreement of the parties hereto.

Nothing contained in this Section 3 of Article VI shall authorize or permit a modification of the [37] provisions of Section 2 of Article IV hereof. The Plan may not be modified so as to require repayment by any Employee or designee of any benefit paid to an Employee or designee by Trustees pursuant to the terms and conditions of the Plan in effect as of the date of such payment.

Exhibit 1-C

4. *Arbitration.* Unless the parties hereto mutually agree on a different method for resolution of the same, all questions, disputes and other issues arising under the Agreement shall be resolved in accordance with the provisions of this Section 4 of Article VI, which provides the exclusive remedy for determination of such questions, disputes, and other issues.

Such questions, disputes or other issues shall be determined in accordance with the grievance procedures contained in said Pacific Coast Longshore Agreement or Master Agreement for Clerks and Related Classifications, whichever may be applicable, commencing at the level of the Coast Labor Relations Committee and terminating with arbitration before the Coast Arbitrator as therein provided. If the parties to said collective-bargaining agreements have failed to agree upon the Coast Arbitrator thereunder so that said office is vacant, or, if the Coast Arbitrator shall at any time be unable or refuse or [38] fail to act, or shall resign, then the parties hereto shall promptly agree upon another Arbitrator to resolve such question, dispute, or issue; if the parties hereto fail to agree upon another Arbitrator, he shall be appointed at the request of either party by Mr. E. D. Conklin; but, if another Arbitrator is not appointed by agreement of the parties or Mr. E. D. Conklin within a reasonable time, either of the parties hereto may apply to the United States District Court for the Northern District of California, Southern Division, for appointment of such other Arbitrator.

Said Coast Labor Relations Committee, Coast Arbitrator, or other Arbitrator, shall have primary and exclusive jurisdiction over all such disputes, questions, or issues and shall decide the same under and in accordance with the terms and conditions of the Plan, including those of this Agreement and said Trusts and compatibly and con-

Exhibit 1-C

sistently with the tax rulings and tax consequences set forth in Section 6 of this Article VI. The decision of the Coast Arbitrator, or other Arbitrator, shall be final and binding as to all questions, disputes and issues within his jurisdiction.

Notwithstanding any other provision of this Agreement, said Coast Labor Relations Committee, the Coast Arbitrator, or other Arbitrator, shall [39] not have jurisdiction over (1) questions, disputes, or issues arising under a Trust for which a procedure is provided by such Trust for resolution of the same; (2) any question, dispute or issue involving the exercise of sole, absolute and unreviewable discretion or of exclusive powers reserved to a party hereto or the Trustees of the said Trusts; and (3) questions, disputes or issues involving an increase of the total amount of the Mechanization Fund, or Contributions thereto, or an acceleration of the annual rate of accumulation thereof.

Nothing contained in this Section 4 of Article VI shall preclude the Trustees of the said Trusts from enforcing their respective rights under the Plan by proceedings in a court of law, equity, or bankruptcy, and, in particular, from instituting legal remedies against an Employer certified by the Association as being in default of its obligations under the Plan.

5. *Modifications of Bargaining Unit.* In the event any group or groups of Employees whose terms and conditions of employment are presently governed by said Pacific Coast Longshore Agreement, said Master Agreement for Clerks and Related Classifications, or any of said miscellaneous related agreements, withdraw from the respective bargaining unit [40] or units covered thereunder and said respective collective-bargaining agreements no longer govern terms and conditions of their employment, the con-

Exhibit 1-C

sequences to the Plan of any such occurrence shall be reviewed by the parties hereto and appropriate amendments to the Plan, providing for the exclusion of such Employees from further benefits under the Plan and for an appropriate and commensurate pro rata reduction in future Contributions to the Mechanization Fund by Employers, shall be subjects for negotiation between the parties hereto.

6. *Tax Rulings.* The parties hereto have entered into this Agreement and established the various Trusts provided for hereunder in reliance on the letter rulings dated September 15, 1961, of the Internal Revenue Service, and on their applicability to all Member Companies, to the effect that the Employers may take a tax deduction from gross income for their respective Contributions paid to the Association for the Mechanization Fund effective with the transfer by the Association from the Mechanization Fund of the same to the respective Trusts to be employed for effecuation of the Plan, and to the effect that Principals may take a tax deduction from gross income for payments made by them to Employers on account of such Contributions in the year such payments are made or the responsibility to make such payments [41] is incurred. If either of said tax consequences is defeated or nullified by construction, amendment, revision, or revocation of said rulings or by any other event whatsoever, the obligations under Article II hereof of the Association and its Member Companies to continue to accumulate the Mechanization Fund and of Employers to pay further Contributions to the Mechanization Fund shall be immediately suspended and the Association may make appropriate refunds to the respective Employers of their Contributions then held by the Association in the Mechanization Fund. Such obligations shall not be revived until and unless during the term of this Agreement the Member Companies

Exhibit 1-C

shall have obtained a further effective ruling of the Internal Revenue Service reaffirming said tax consequences or until and unless an equivalent effective assurance of said tax consequences is obtained, either or both in a form satisfactory to the Association in its sole, absolute and unreviewable discretion. The Union agrees to assist the Association and Member Companies in obtaining such further ruling or equivalent assurance.

Further, the parties hereto recognize that rulings by the Internal Revenue Service respecting the reporting and payment of withholding and payroll taxes will be required, and, pending receipt of such rulings the Association in administering the [42] Mechanization Fund and the Trustees in administering their respective Trusts provided for herein shall establish appropriate reserves, consistent with the provisions of this Agreement, for such taxes for which either the Employers or Employees may be primarily liable, and all such respective taxes shall be paid, directly or indirectly, from the Mechanization Fund or the respective Trusts, as the case may be, as provided in Article IV hereof.

7. *War or National Emergency.* In the event of declaration of war by the United States or hostilities involving the Armed Forces of the United States or other national emergency and a resultant requisitioning by the United States of title or use of a substantial number of vessels owned or operated by Member Companies, the obligations of the Association and its Member Companies under Article II hereof shall be automatically and immediately reviewed as a subject of negotiations between the parties hereto.

8. *Equal Responsibilities of Employers.* Employers who are not Member Companies and who desire to par-

Exhibit 1-C

ticipate in this Plan shall do so only by entering into arrangements hereunder acceptable to the Association and Union.

9. *Legality.* It is hereby expressly recognized by the Union that the Association and its Member Companies in entering into this Agreement are relying [43] on rulings which have been obtained or are in the process of being obtained to the effect that for purposes of the Fair Labor Standards Act, as amended, no part of any Contributions shall be included in the regular rate of wages of any Employee, and if said rulings are not obtained, or, if obtained, are defeated or nullified by construction, amendment, revision or revocation of said rulings or by any other event whatsoever, or, in the further event any portion of the Plan is held unlawful under any law by decision of any court, the obligations under Article II hereof of the Association and its Member Companies to continue to accumulate the Mechanization Fund and of Employers to pay further Contributions to the Mechanization Fund shall be immediately suspended and the Association may make appropriate refunds to the respective Employers of their Contributions then held by the Association in the Mechanization Fund. Such obligations shall not be revived until and unless during the term of this Agreement the Member Companies shall have obtained a further effective ruling or further effective assurances reaffirming said rulings under the Fair Labor Standards Act, as amended, or a further court decision by an appellate court reversing the decision as to the unlawfulness of the Plan, such further ruling or assurances to be in a form satisfactory [44] to the parties hereto. The Union agrees to assist the Association in obtaining all rulings, assurances or court decision.

(Exh. 1-C, 44-45)

309a

Exhibit 1-C

10. *Governing Law.* This Agreement and the Plan shall be governed by and construed under the laws of the State of California, and it is hereby acknowledged that the parties hereto have jointly undertaken to draft and prepare the form of the same. The titles and subtitles used in this Agreement are not a part of this Agreement, are included solely for convenient reference to the respective articles and sections hereof and have no bearing upon the interpretation of any terms and provisions hereof.

11. *Termination of Agreement.* Except as specifically provided in Section 3 of Article V hereof, the Association and Member Companies shall in no event be required by this Agreement or the Plan to agree to continuance of the whole or any part of the Plan for an additional term of years, or to continue making provision for payment of vesting benefits following the termination of this Agreement to any Employee, or designee, who does not become a Vestee before July 1, 1966, or for payment beyond said date of any other benefit provided by the Plan. The Agreement shall run concurrently with said Pacific Coast Longshore Agreement and Master Agreement for Clerks and Related Classifications, [45] ceasing therewith, until July 1, 1966, or to such later date as is required for the sole purpose of effectuating the provisions of Section 3 of Article V hereof.

Executed this 15th day of November, 1961.

FOR THE ASSOCIATION:

/s/ J. PAUL ST. SURE.

FOR THE UNION:

/s/ HARRY BRIDGES.

Exhibit 1-D

**[1] (SCHEDULE A
DEATH AND DISABILITY BENEFITS)**

1. DISABILITY BENEFITS.

(a) An Employee shall be eligible to receive monthly disability benefits commencing on or after July 1, 1961, upon meeting each of the following requirements:

(1) He is, and was, for the nine calendar years immediately preceding the event qualifying him for a disability benefit, fully registered under said Pacific Coast Longshore Agreement, said Master Agreement for Clerks and Related Classifications, or said miscellaneous related agreements, and makes himself regularly available for work, unless he is disabled through illness or injury or is on a recognized leave of absence.

(2) He has at least 15 qualifying years of service during the 18 calendar years preceding the event qualifying him for a disability benefit.

(3) He has become permanently and totally disabled as a result of accident or sickness which forces him to leave gainful employment and registration in the industry and which occurs before his 65th birthday.

(4) He was credited with a qualifying year of service either for the payroll year prior to the payroll year in which his disablement occurred or for the payroll year in which his disablement occurred.

(b) An Employee shall be deemed to be permanently and totally [2] disabled only if, on medical evidence that

Exhibit 1-D

is satisfactory to the Trustees of the ILWU-PMA Welfare Fund as amended, he is found permanently and totally unable as a result of accident or illness to engage further in normal employment under whichever of said collective-bargaining agreements, or miscellaneous agreements related thereto, has governed the terms and conditions of his prior employment and, provided further, that he does not earn more than One Hundred Dollars (\$100) a month in any other employment or gainful pursuit whatsoever. The Trustees shall decide in their sole, absolute and unreviewable discretion whether permanent and total disability under the foregoing standards has occurred so as to entitle an Employee to disability benefits hereunder.

(c) An Employee applying for a disability benefit shall be required at any reasonable time to submit to an examination by a licensed medical doctor or medical doctors selected by the Trustees and may be required to submit to similar re-examination periodically as the Trustees may direct, provided that the Trustees shall pay the cost of such examinations that are not furnished without charge to the Employee.

(d) The amount of the monthly benefit to a disabled Employee shall be determined by the Trustees of the ILWU-PMA Welfare Trust and shall be paid until he has received a total amount, increasing on an annual straight-line basis according to qualifying years of service, from a minimum of Two Thousand Six Hundred Forty Dollars (\$2,640) with 15 years of qualifying service as of the date of disablement to a maximum of Seven Thousand Nine Hundred Twenty Dollars (\$7,920) at 25 years of service; except that if death to the disabled Employee should occur prior to his having received the total amount due him, his designee shall be paid the monthly benefits which would have been due the disabled Employee had he continued to live. The total

Exhibit 1-D

amounts of the benefit are subject [3] to the power reserved to the Union and Association by paragraph (c), Section 2, Article V of the Agreement to decrease, defer or eliminate payment of the disability benefit.

(e) The requirements for qualifying years of service over 15 years shall be follows:

- 16 out of the past 19 calendar years
- 17 out of the past 20 calendar years
- 18 out of the past 21 calendar years
- 19 out of the past 22 calendar years
- 20 out of the past 23 calendar years
- 21 out of the past 24 calendar years
- 22 out of the past 25 calendar years
- 23 out of the past 26 calendar years
- 24 out of the past 27 calendar years
- 25 out of the past 35 calendar years

(f) In no case shall such disability benefits be paid to Employees who have retired and become Vestees under Schedule B of the Agreement.

2. DEATH BENEFITS.

(a) A designee appointed by an Employee shall be eligible to receive a death benefit when such Employee meets each of the following requirements:

(1) He is *fully* registered under said Pacific Coast Longshore Agreement, said Master Agreement for Clerks and Related Classifications, or said miscellaneous related agreements, and makes himself regularly available for work, unless he is disabled by illness or injury or is on a recognized leave of absence.

(2) He has at least 5 qualifying years of service during the 8 calendar years preceding death.

(Exh. 1-D, 3-4)

313a

Exhibit 1-D

(3) He was credited with a qualifying year of service either for the payroll year prior to the year in which his death occurred, the payroll year in which death occurred, or the payroll year in which he contracted the illness or injury [4] proximately causing his death, if such payroll year ends subsequent to January 1, 1961.

(4) He dies on or after July 1, 1961, but before retirement, becoming a Vestee under the Plan, or a recipient of a disability benefit under this Schedule A.

(b) A designee appointed by an Employee shall be eligible to receive a death benefit when such Employee meets each of the following requirements:

(1) He has at least 15 qualifying years of service and retires on or after July 1, 1961, under the ILWU-PMA Pension Plan in accordance with the provisions thereof which are in effect on or before January 1, 1962.

(2) He dies on or after July 1, 1961, but before July 1, 1966 and before becoming a Vestee under the Plan or a recipient of a disability benefit under this Schedule A.

(c) The monthly benefit shall become payable on proof of death satisfactory to the Trustees and shall be paid to the designee in monthly installments¹ the amount of each to be determined by the Trustees and shall be paid until he has received a total, which is, increasing on a straight-line basis according to qualifying years of service of the deceased Employee, an amount from a minimum of Two Thousand

¹ Agreement reached to pay death benefit in lump sum, per Trustee meeting of 12/15/61.

Exhibit 1-D

Six Hundred Forty Dollars (\$2,640) for 5 to and including 15 years of service to a maximum of Five Thousand Dollars (\$5,000) for 20 years of service. The total amounts of the benefit are subject to the power reserved to the Union and Association by paragraph (c), Section 2, Article V of the Agreement to decrease, defer or eliminate payment of the death benefit. Requirements for qualifying [5] years of service over 15 in proportion to calendar years shall be as in paragraph (e) of Section 1 hereof.

3. DESIGNEES.

The Trustees shall determine and by regulation define what classes of persons shall be eligible to receive such disability and death benefits as designees, insofar as permitted under 29 USC Section 186. Any payment made by the Trustees to designees in accordance with their determination of eligibility shall be in complete discharge of the liability for any such benefit under this Schedule A or the Plan.

4. QUALIFYING YEARS OF SERVICE.

(a) An Employee shall be deemed to have a qualifying year of service in any payroll year if during such payroll year he satisfies any of the following requirements:

(1) During any such payroll year prior to 1945 he was fully registered, or he was a permit man and worked 480 hours.

(2) During any such payroll year after 1944 he qualified for a vacation or worked sufficient hours to qualify for a vacation in his port.

(3) During any such payroll year he served as a Coast Committeeman or as an officer of the Union or a local, or in the joint employ of the parties hereto while fully registered.

Exhibit 1-D

(4) During any such payroll year he was continuously absent from employment under said Pacific Coast Longshore Agreement, said Master Agreement for Clerks and Related Classifications, or said miscellaneous related agreements, or any predecessor to any of said collective-bargaining agreements, because of industrial illness or injury arising out of employment under such collective-bargaining agreements so as to be entitled [6] to compensation under a state or federal compensation act, or because of illness or injury proximately causing his death, if such illness or injury was incurred in a payroll year ending subsequent to January 1, 1961. The Trustees may, in their sole, absolute and unreviewable discretion, credit an Employee with a qualifying year of service when the Trustees are satisfied that such Employee was absent from work by reason of such an illness or injury for less than a payroll year but for such an extended period that such Employee could not have acquired a qualifying year of service by making himself available regularly for such employment while not suffering from such illness or injury.

(5) Years of service in the Armed Forces of the United States during World War II or during the Korean Conflict shall be counted as qualifying years of service, and military service at any other time shall be counted as military service for the term of one enlistment or draft, but will not be counted in addition to World War II or Korean Conflict service, and will in no case be counted for more than four years; provided that the Employee was fully registered as required under paragraphs (a)(1) of Sections 1 and 2 hereof immediately prior to his entrance into military service, and returned to the active work force within 120 days after discharge, or

Exhibit 1-D

within a longer period if not physically qualified for return to the active work force within 120 days, and if the Employee has since his return to the active work force qualified for a vacation in his port; and provided that no more qualifying years of service be credited to an Employee by reason of this paragraph than would have been credited to [7] such employee if he had been continuously available for work:

(b) The following shall not be deemed qualifying service as an Employee:

(1) Continuous absence from employment for a payroll year or more because of illness or injury, other than specified in paragraph (a)(4) of this Section 4.

(2) Service in the Armed Forces of the United States except as specified in paragraph (a)(5) of this Section 4 or employment during World War II by the United States as a civilian in occupations comparable to those covered by the aforesaid collective-bargaining agreements.

(3) Years of service described under paragraph (a) of this Section 4 of Schedule A which are earned after July 1, 1961, by an Employee who is 65 years of age or older.

(c) Qualifying years of service earned under said Pacific Coast Longshore Agreement, or any predecessor thereto, said Master Agreement for Clerks and Related Classifications, or any predecessor thereto, or any of said miscellaneous related agreements, or any predecessors thereto, shall be interchangeable.

Exhibit 1-E

[1] SCHEDULE B

VESTING BENEFITS

1. VOLUNTARY REMOVAL FROM FURTHER EMPLOYMENT.

(a) An Employee shall become a Vestee and be eligible to receive the monthly vesting benefit set forth in paragraph (b) of Section 1 hereof commencing on or after July 1, 1961, upon meeting each of the following requirements:

(1) He is, and was, for the nine calendar years immediately preceding the date on which he elects to become a vestee, fully registered under said Pacific Coast Longshore Agreement, said Master Agreement for Clerks and Related Classifications, or said miscellaneous related agreements, and makes himself regularly available for work unless he is disabled through illness or injury or is on a recognized leave of absence.

(2) He has at least 25 years of qualifying service out of the past 35 calendar years.

(3) He is at least 62 years of age.

(4) He has voluntarily removed himself from the active work force in compliance with the regulations adopted by the Trustees of the ILWU-PMA Vesting Benefit Trust.

(5) He was credited with a qualifying year of service for the payroll year prior to the payroll year in which he elects to remove himself from further employment.

(b) Vestees shall receive the total sum of Seven Thousand Nine Hundred Twenty Dollars (\$7,920) in 36 monthly

Exhibit 1-E

payments of Two Hundred [2] Twenty Dollars (\$220) each, less applicable payroll and withholding taxes, subject to the power of said Trustees to pay said total sum in monthly payments of not less than One Hundred Dollars (\$100), as they may in their sole, absolute and unreviewable discretion decide, and subject to the power reserved to the Union and Association by paragraph (c), Section 2, Article V of the Agreement to decrease, defer or eliminate payment of the vesting benefit.

2. MANDATORY REMOVAL FROM FURTHER EMPLOYMENT.

(a) An Employee shall become a Vestee and be eligible to receive the monthly vesting benefit set forth in paragraph (b) of Section 2 hereof commencing on or after July 1, 1961, upon meeting each of the following requirements:

(1) He is fully registered under said Pacific Coast Longshore Agreement, said Master Agreement for Clerks and Related Classifications, or said miscellaneous related agreements, and makes himself regularly available for work unless he is disabled through illness or injury or is on a recognized leave of absence.

(2) He is age 62 and has at least 22 qualifying years of service out of the past 32 calendar years, or he is age 63 and has at least 23 qualifying years of service out of the past 33 calendar years, or he is age 64 and has at least 24 qualifying years of service out of the past 34 calendar years.

(3) He is compelled to remove himself from the active work force by mutual agreement of the Union and the Association or by decision of an arbitrator under and in accordance with Section 4 of Article VI of the Agreement that such separation from

Exhibit 1-E

the active work force is deemed necessary for implementing the Plan.

[3] (b) Employees becoming Vestees under this Section 2 shall receive the total sum of Seven Thousand Nine Hundred Twenty Dollars (\$7,920) in 36 monthly payments of Two Hundred Twenty Dollars (\$220) each, less applicable payroll and withholding taxes, subject to the power of said Trustees to pay said total sum in monthly payments of not less than One Hundred Dollars (\$100), as they may in their sole, absolute and unreviewable discretion decide, and subject to the power reserved to the Union and Association by paragraph (c), Section 2, Article V of the Agreement to decrease, defer or eliminate payment of the vesting benefit. In addition, any such Vestee shall receive an extra payment of One Hundred Dollars (\$100) per month, less applicable payroll and withholding taxes, until he reaches age 65, i.e., from the date he is compelled to leave the active work force until his 65th birthday, except that a designee of such a Vestee shall not be entitled to receive said extra payment. Said extra payment shall be made when the need therefor arises by and from the ILWU-PMA Pension Fund as an incident of the ILWU-PMA Pension Plan.

3. DESIGNEES.

Said Trustees shall determine and by regulation define what classes of persons shall be eligible to receive vesting benefits as designees, insofar as permitted under 29 USC Section 186. Any payment made by the Trustees to designees in accordance with their determination of eligibility shall be in complete discharge of their liability for any such benefit under this Schedule B or the Plan.

Exhibit 1-E

4. DEATH PROVISION.

In the event a Vestee dies before the total sum of Seven Thousand Nine Hundred Twenty Dollars (\$7,920) has been paid to him, his designee shall receive the monthly benefits which would have been due the Vestee [4] had he continued to live, excluding therefrom the additional payments provided for under paragraph (b) of Section 2 hereof.

5. ACCELERATED PAYMENT.

All benefits to Vestees, or their designees, under the Vesting Benefit Trust shall be by monthly payments, except that upon application of the Vestee, or his designee, his showing cause, and the availability of moneys in the Mechanization Fund, the Trustees may, in their sole, absolute and unreviewable discretion, accelerate payment of the balance of the vesting benefit to which a Vestee, or his designee, may be entitled.

6. QUALIFYING YEARS OF SERVICE.

(a) An Employee shall be deemed to have a qualifying year of service in any payroll year if during such payroll year he satisfies any of the following requirements:

(1) During any such payroll year prior to 1945 he was fully registered, or he was a permit man and worked 480 hours.

(2) During any such payroll year after 1944 he qualified for a vacation or worked sufficient hours to qualify for a vacation in his port.

(3) During any such payroll year he served as a Coast Committeeman or as an officer of the Union or a local, or in the joint employ of the parties hereto while fully registered.

(Exh. 1-E, 4-5)

321a

Exhibit 1-E

(4) During any such payroll year he was continuously absent from employment under said Pacific Coast Longshore Agreement, said Master Agreement for Clerks and Related Classifications, or said miscellaneous related agreements, or any predecessor to any of said collective-bargaining agreements, because of industrial illness or injury arising out of employment under such collective-bargaining agreements so as to be entitled to [5] compensation under a state or federal compensation act. The Trustees may, in their sole, absolute and unreviewable discretion, credit an Employee with a qualifying year of service when the Trustees are satisfied that such Employee was absent from work by reason of such an illness or injury for less than a payroll year but for such an extended period that such Employee could not have acquired a qualifying year of service by making himself available regularly for such employment while not suffering from such illness or injury.

(5) Years of service in the Armed Forces of the United States during World War II or during the Korean Conflict shall be counted as qualifying years of service, and military service at any other time shall be counted as military service for the term of one enlistment or draft, but will not be counted in addition to World War II or Korean Conflict service, and will in no case be counted for more than four years; provided that the Employee was fully registered as required under paragraphs (a) (1) of Sections 1 and 2 hereof immediately prior to his entrance into military service, and return to the active work force within 120 days after discharge, or within a longer period if not physically qualified for return to the active work force within 120 days, and

Exhibit 1-E

if the Employee has since his return to the active work force qualified for a vacation in his port; and provided that no more qualifying years of service be credited to an Employee by reason of this paragraph than would have been credited to such Employee if he had been continuously available for work.

(b) The following shall not be deemed qualifying service as an Employee:

[6] (1) Continuous absence from employment for a payroll year or more because of illness or injury, other than specified in paragraph (a) (4) of this Section 6.

(2) Service in the Armed Forces of the United States except as specified in paragraph (a) (5) of this Section 6 or employment during World War II by the United States as a civilian in occupations comparable to those covered by the aforesaid collective-bargaining agreements.

(3) Years of service described under paragraph (a) of this Section 6 of Schedule B which are earned after July 1, 1961, by an Employee who is 65 years of age or older.

(c) Qualifying years of service earned under said Pacific Coast Longshore Agreement, or any predecessor thereto, said Master Agreement for Clerks and Related Classifications, or any predecessor thereto, or any of said miscellaneous related agreements, or any predecessors thereto, shall be interchangeable.

7. DISQUALIFICATION.

An Employee who has qualified for a disability benefit under the Plan and has received payment of any portion

(Exh. 1-E, 6, Exh. 1-F, 1)
323a

Exhibit 1-F

thereof or who has received a pension payment under the ILWU-PMA Pension Plan and has subsequently returned to work as an Employee shall in no event qualify hereunder as a Vestee or be entitled to payment of a vesting benefit in accordance with the provisions of the Plan. An Employee who becomes a Vestee and is as such entitled to receive payment of a vesting benefit under the Plan shall in no event be allowed to return to the active work force unless the parties hereto mutually agree in writing to such return and then only on such conditions as said parties may prescribe.

Exhibit 1-F

[1] SCHEDULE C

SUPPLEMENTAL WAGE BENEFITS

1. EXPLANATORY STATEMENT.

(a) General Purpose and Nature of Benefit.

(1) Supplemental wage benefits are designed to afford compensation to eligible Employees whose earnings have been reduced below minimum levels, as herein defined, because of reduced work opportunities suffered by such Employees (despite the fact they have made themselves regularly available for employment), resulting from labor-saving devices and changed work practices adopted by Employers under the permissive provisions referred to in Section 1 (a) of Article VI of the Agreement as incorporated in said Pacific Coast Longshore Agreement, said Master Agreement for Clerks and Related Classifications, or said miscellaneous related agreements, or several of any of said collective-bargain-

Exhibit 1-F

ing agreements, all of which were ratified as of January 10, 1961.

(2) Such supplemental wage benefits are not to compensate Employees on account of reduced [2] work opportunities caused by any economic decline in the Pacific Coast shipping industry and a resultant reduction in the amount of cargo tonnage handled during any period.

(3) Whether or not any such reduction in work opportunities has been caused by such an economic decline or instead has resulted from labor-saving devices or changed work practices adopted by Employers under such premissive provisions shall be determined by the Trustees of the ILWU-PMA Supplemental Wage Benefit Trust in accordance with the formula set forth in Appendix II of this Schedule C.

(b) *Evaluation by Port Areas.* For the purpose of determination by the Trustees of when or whether such Employees have suffered reduced earnings below such minimum levels because of reduced work opportunities resulting from the adoption by Employers of such labor-saving devices and work practices and not from such an economic decline, relevant factors, as herein designated, shall be evaluated by said Trustees on a Port Area basis. A Port Area shall embrace the port, ports or docks in a given area in the States of California, Oregon and Washington when by custom and practice Employees who [3] work out of one port are also customarily offered work at other ports or docks. A single port may comprise a Port Area only if Employees who work out of that port are not customarily offered work in another port. Two ports may comprise a Port Area only if Employees who work out of one of such ports are also customarily offered work in the other port

Exhibit 1-F

and such Employees are seldom offered work at a third port.

(c) *Longshore and Marine Clerk Groups.* For the same purpose described in paragraph (b) of this Section 1, Employees shall be assigned by Port Area to one of two Groups: one Group shall be longshoremen whose terms and conditions of employment are governed by said Pacific Coast Longshore Agreement or said miscellaneous related agreements; the other Group shall be marine clerks and Employees in related classifications whose terms and conditions of employment are governed by said Master Agreement for Clerks and Related Classifications.

(d) *Benefit Periods.* A Benefit Period shall be comprised of four consecutive payroll weeks, and said Trustees shall establish a consecutive series of Benefit Periods, without overlapping of, or interval between, Benefit Periods, commencing with the payroll week which includes January 15, 1961.

(e) *Measure of Benefit.* Averages of total hours worked by Employees in each Group in each Port Area [4] shall be determined by said Trustees for each Benefit Period, herein called Group Averages, in accordance with the formula set forth in Appendix I of Schedule C. Pursuant to said formula, and the provisions of Section 4 hereof said Trustees shall also determine for each such Benefit Period whether the relationship between the earnings of any Employee during such Benefit Period and the average earnings of the Group to which such Employee belongs entitled such Employee, if otherwise eligible, to receive a supplemental wage benefit for such Benefit Period.

(f) *Eligibility for Benefit.* Eligibility requirements that must be met by an Employee before he is entitled to receive a supplemental wage benefit are set forth in Section 3 hereof.

Exhibit 1-F

(g) *Paramount Provisions.* All of the provisions of this Section 1 are of an explanatory nature, and although the same shall be given effect and meaning as an integral part of this Schedule C, if any term or provision in this Section 1 is inconsistent with any term or provision set forth in subsequent sections of this Schedule C or of Appendices I or II hereof or any provision of the ILWU-PMA Supplemental Wage Benefit Trust the provisions of such subsequent sections or Trust shall be deemed paramount and controlling as to the meaning and effect of any such term or provision [5] in this Section 1; provided that, although the Trustees of the ILWU-PMA Supplemental Wage Benefit Trust shall not have power to change the formulas of paragraph (a) (5) of Section 3 or of Appendices I and II hereof, said Trustees may, in exercise of their discretion, change the amount or numbers of established norms of hours, weeks, or percentage of Group Average, or percentage of total Employees set forth in said formulas, or the amount of \$4,800.00 or benefit amount product referred to in paragraph (a)(6) of Section 3 hereof when it appears to said Trustees that said norms operate to preclude realization of the purpose of the Supplemental Wage Benefit Trust.

2. PAYMENT OF BENEFIT FOR QUALIFYING PERIODS.

(a) Supplemental wage benefits shall be payable as to a Group in a Port Area for a Benefit Period when the Group Average of such a Group is less than 140 hours for such Benefit Period.

(b) Said supplemental wage benefits for said Benefit Period shall be paid in a lump sum, in an amount determined pursuant to the provisions of Section 4 hereof, to each Employee, who, during said Benefit Period, is or was a member of such Group and is eligible under the provisions of Section 3 hereof, by said Trustees as soon as they may reason-

Exhibit 1-F

ably determine that [6] such a supplemental wage benefit is payable.

3. ELIGIBILITY FOR BENEFIT.

(a) An Employee shall be eligible for a supplemental wage benefit in an amount determined pursuant to the provisions of Section 4 hereof when he has established in compliance with regulations adopted by said Trustees that he meets each of the following requirements:

(1) He has been fully registered within the meaning and under the provisions of said Pacific Coast Longshore Agreement, said Master Agreement for Clerks and Related Classifications or said miscellaneous related agreements at least three years and during a Benefit Period for which said supplemental wage benefit is payable pursuant to paragraph (a) of Section 2 hereof and remains so when said supplemental wage benefit is to be paid pursuant to paragraph (b) of said Section.

(2) He has sufficient hours to qualify for a two week vacation payable in the payroll year which includes the Benefit Period for which said supplemental wage benefit is payable pursuant to the provisions of paragraph (a) of Section 2 hereof.

[7] (3) During the Benefit Period for which said supplemental wage benefit is payable and until the same has been paid pursuant to the provisions of paragraph (b) of Section 2 hereof, he has been available and has not refused dispatch for his work and has not participated, and is not participating, in any work stoppage in violation of said applicable collective-bargaining agreements.

(4) He is not during the Benefit Period for which a supplemental wage benefit is payable pur-

Exhibit 1-F

suant to the provisions of paragraph (a) of Section 2 hereof an Excluded Employee as that term is described in Appendix I hereof.

(5) His total hours worked or credited to him during a Benefit Period for which a supplemental wage benefit is payable pursuant to the provisions of paragraph (a) of Section 2 hereof are at least 93% of the Group Average of his Group for said Benefit Period.

(6) His total earnings for the 12 consecutive Benefit Periods immediately preceding the Benefit Period for which a supplemental wage benefit is payable under paragraph (a) of Section 2 hereof, which earnings have [8] been multiplied by the decline adjustment factor determined pursuant to the provisions of Appendix II hereof when said factor for his Port Area for said Benefit Period exceeds 100%, do not exceed the larger of either \$4,800.00 or 12 times the benefit amount if the same is determined pursuant to the provisions of Paragraph (b) of Section 4 hereof.

(b) "Total earnings" of an Employee shall include any benefits previously paid under the Plan and all compensation paid to or for the account of such Employee under said Pacific Coast Longshore Agreement, said Master Agreement for Clerks and Related Classifications, or said miscellaneous related agreements, or any of said collective-bargaining agreements, including therein all straight-time, overtime and penalty wages; vacation pay; workmen's compensation payable under any private or public insurance coverage for which an Employer pays all or a portion of the premiums, to the extent such work-

Exhibit 1-F

men's compensation is a payment in lieu of earnings lost by reason of absence from work. "Total earnings" shall not include any compensation paid to an Employee for travel time or expenses incurred in connection with travel, or any distribution from the ILWU-PMA Welfare Fund to or for the account or benefit of an Employee.

[9] (c) "Total hours worked" by an Employee shall be determined in accordance with the provisions of Section 3 of Appendix 1 hereof.

(d) Notwithstanding any provision of this Schedule C, an Employee who has received or is receiving payment of a vesting benefit or a death or disability benefit provided by the Plan, or of a pension under the ILWU-PMA Pension Plan shall not be eligible to receive a supplemental wage benefit payable for any Benefit Period.

4. AMOUNT OF BENEFIT.

(a) Subject to the provision of paragraphs (b) to (d), inclusive, of this Section 4, the maximum amount of a supplemental wage benefit shall be \$400 for each Benefit Period in which a supplemental wage benefit is payable pursuant to the provisions of paragraph (a) of Section 2 hereof.

(b) Said Trustees may increase the maximum amount of the supplemental wage benefit which is payable to Employees in a Group for a Benefit Period to an amount equal to 140 times the basic straight-time hourly rate payable to Employees under said Pacific Coast Longshore Agreement.

(c) The amount of the supplemental wage benefit, determined pursuant to the provisions of either paragraph (a) or (b) of this Section 4, and payable for a [10] Benefit Period under the provisions of paragraph (a) of Section 2

Exhibit 1-F

hereof to an eligible Employee, shall be reduced by the total of the following items:

(1) His total earnings determined pursuant to the provisions of paragraph (b) of Section 3 hereof plus any other earnings from other employment for said Benefit Period, but excluding therefrom any payments during the Benefit Period of workmen's compensation, and vacation pay unless an authorized vacation was in fact taken during the Benefit Period in which case that portion of vacation pay attributable to the time the man was on vacation during the Benefit Period shall be included within said total earnings.

(2) Unemployment insurance compensation, if any, received by such Employee for said Benefit Period.

(d) Notwithstanding any provision of this Schedule C, the maximum amount of a supplemental wage benefit payable to an Employee eligible therefor shall not exceed the difference between 140 hours and the Group Average of his Group in the Benefit Period for which said supplemental wage benefit is payable, multiplied by \$2.857 or, if said Trustees have increased the [11] amount of the supplemental wage benefit pursuant to the provisions of paragraph (b) of this Section 4, by the basic straight-time hourly rate so adopted by said Trustees.

5. DISCLAIMER. Neither the Association, any Employer, any Principal nor the Union guarantees that the portion of the Mechanization Fund allocable or allocated to the ILWU-PMA Supplemental Wage Benefit Trust shall be sufficient to pay the benefits provided by this Schedule C, and none of them shall be required by any provision of the Plan to provide otherwise for payment of such supplemental wage benefits or any portion thereof.

(Exh. 1-F, 1-2 of App. I)
331a

Exhibit 1-F

[1] APPENDIX I TO SCHEDULE C

1. For each Benefit Period a Group Average for each Group in each Port Area shall be computed by finding the average of the total hours worked during a Benefit Period by a representative class of Employees in such Group.

(a) Such representative class of Employees in such Group shall be comprised of those Employees included herein by reason of the provisions of subparagraphs (1), (2), (3) and (4) below.

(1) Each of those Employees in such Group whose total hours worked or credited to him is at least 360 hours within a period of 12 consecutive payroll weeks, the last of such 12 consecutive payroll weeks to be the last payroll week of the Benefit Period, shall be included in said representative class. If the Employees included under this subparagraph (1) equal 70% or more of the total Employees in the Group, then such included Employees shall constitute the entire representative class and the provisions of subparagraphs (2) and (3) do not apply.

[2] (2) Each of those Employees not included by reason of subparagraph (a) (1) of this Section 1 but whose total hours worked or credited to him is at least 30 hours in each of 8 payroll weeks within a period of 12 consecutive payroll weeks, the last of such 12 consecutive payroll weeks to be the last payroll week of the Benefit Period, if at least 2 of said 8 payroll weeks are within the Benefit Period, shall be included in said representative class.

(3) If the total of Employees included by reason of subparagraphs (1) and (2) do not equal at least 70% of the Total Employees of the Group, then the following Employees shall be included.

Exhibit 1-F

(i) The total number of Employees in the Group for such Benefit Period shall now be multiplied by 70% and the product thereof shall be reduced by the sum of the number of Employees to be included under subparagraph (1) plus the number included under subparagraph (2) above. The difference, if any, shall be the number of Employees to be included [3] under this subparagraph (3). Employees to be included under this subparagraph (3) shall be chosen according to individual totals of hours worked and credited to them during the Benefit Period, starting from the highest to the lowest and shall be those who are not to be included within said representative class by reasons of subparagraphs (1) and (2) above.

(ii) All Employees within a Group who have the same total hours worked plus hours credited to them during the Benefit Period shall be included within the representative class thereof, if the provisions of this subparagraph (3) become operative, notwithstanding that not all such Employees are required to insure that said representative class is comprised of at least 70% of the Employees within the Group for such Benefit Period.

(4) An Employee who is on a visitor's permit shall not be included within said representative class of the Group within which he is permitted to make himself available for employment by reason of said visitor's permit.

Exhibit 1-F

[4] (b) Total hours worked, including hours credited, during the Benefit Period by such representative class of a Group which has been developed pursuant to the provisions of paragraph (a) of this Section 1 shall be ascertained and divided by the total number of Employees included in such representative class. This quotient shall be the Group Average for the Group during a Benefit Period.

2. An Employee who is within a Group during a Benefit Period but is not also within the representative class thereof established pursuant to the provisions of paragraph (a) of Section 1 hereof shall be, for the purposes of Schedule C, deemed an Excluded Employee for such Benefit Period.

3. (a) "Total hours worked" by an Employee shall include all hours for which he was entitled to compensation either at straight-time, overtime, or penalty rates; all hours which would be credited to him by reason of an on-the-job injury, or a non-industrial illness or injury, under the provisions of the ILWU-PMA Longshore Agreement on Vacations; and, subject to paragraph (b) of this Section 3, all vacation time for which he has already received vacation pay under said Pacific Coast Longshore Agreement, said Master Agreement for Clerks and Related Classifications, or any of said miscellaneous related agreements, or any of [5] several of said collective-bargaining agreements, each day of vacation to be counted as 8 hours; provided, however, hours, or portions thereof, for which an Employee has been allowed "travel time" shall not be included within said "total hours worked".

(b) Vacation time shall be included within the total hours worked by an Employee in a Benefit Period, or portion thereof, when such Employee is on an authorized vacation.

(Exh. 1-F, 5 of App. I, 1-2 of App. II)

334a

Exhibit 1-F

(c) All vacation time included within the total hours worked by an Employee shall be allocated to the Group of which such Employee was a member when he was on an authorized vacation, notwithstanding such Employee was not a member of such Group when such vacation, or portion thereof, was earned.

[1] APPENDIX II TO SCHEDULE C

1. Whenever for a Benefit Period a Port Area's decline adjustment factor determined pursuant to the provisions of this Appendix II exceeds 100%, an adjustment shall be made, as directed by paragraph (a)(6) of Section 3 of Schedule C, to an Employee's total earnings for 12 consecutive Benefit Periods immediately preceding the Benefit Period for which a supplemental wage benefit is payable pursuant to the provisions of paragraph (a) of Section 2 of Schedule C. No such adjustment shall be made when said decline adjustment factor is 100% or less.

2. Whenever a supplemental wage benefit is payable for a Benefit Period pursuant to the provisions of paragraph (a) of Section 2 of Schedule C, a decline adjustment factor shall be determined for each Port Area for each Benefit Period commencing with the Benefit Period in which January 1, 1962 falls, as follows:

(a) The average annual tonnage handled in such Port Area during the base period shall be computed.

(b) The tonnage handled in such Port Area in a period comprised of 12 calendar months, the last of which ends in such Benefit Period, shall be computed.

[2] (c) The decline adjustment factor for such Port Area in such Benefit Period shall be the percentage resulting from the division of the tonnage figure developed pursuant

(Exh. 1-F, 2-3 of App. II)
335a

Exhibit 1-F

to the provisions of paragraph (a) of this Section 2 by the tonnage figure developed pursuant to the provisions of paragraph (b) of this Section 2.

3. The base period referred to in Section 2 hereof shall be January 1, 1959, to and including December 31, 1960, or such other period which is determined pursuant to the provisions of this Section 3. The Trustees may adopt an alternative base period which they, in their sole judgment, decide more accurately reflects the normal operating conditions of a Port Area prior to implementation of the provisions of the Agreement pertaining to the increasing of efficiency in operations by utilization of labor-saving devices and the elimination of restrictive work practices. In the event of a deadlock among said Trustees, the same shall be resolved under and in accordance with the procedures established by the provisions of Section 4 of Article VI of the Agreement, excluding therefrom the Coast Labor Relations Committee or Coast Arbitrator established or appointed under the Master Agreement for Clerks and Related Classifications solely. The decision of said Trustees, the Coast Labor Relations Committee, or Coast Arbitrator, as the case may be, [3] shall be conclusive and binding on all persons howsoever interested in the Plan.

4. For the purposes of Section 2 hereof, "tonnage" shall be ascertained by giving a weight of one (1) to each ton or equivalent measurement ton, of general cargo, lumber and logs; and a weight of two-tenths (.2) to each ton, or equivalent measurement ton, of bulk dry cargo such as grain, ore and copra. The Trustees shall have power to decide whether in the light of the usual classifications adopted by the Pacific Coast shipping industry a commodity is "bulk dry cargo". The Association and Union, from time to time, during the term of the Agreement may by their mutual agreement change the method provided by this Section 4 for ascertaining "tonnage".

(Exh. 1-G, 1)

336a

Exhibit 1-G

[1] PACIFIC MARITIME ASSOCIATION
16 California Street
Phone Douglas 2-7973
San Francisco 11, Cal.

November 15, 1961

International Longshoremen's &
Warehousemen's Union
150 Golden Gate Avenue
San Francisco, California

Gentlemen:

As of the above date, the Union and Association executed the ILWU-PMA Supplemental Agreement on Mechanization and Modernization, which formalizes and supersedes the Memorandum of Agreement on Mechanization and Modernization of October 18, 1960.

By paragraph (a) of Section 1 of Article VI of the ILWU-PMA Supplemental Agreement on Mechanization and Modernization, the parties thereto acknowledge that the provisions of said Memorandum of Agreement which are not identified as having been incorporated in said ILWU-PMA Supplemental Agreement on Mechanization and Modernization have been incorporated in the Pacific Coast Longshore Agreement, the Master Agreement for Clerks and Related Classifications, and certain miscellaneous related agreements, all of which collective-bargaining agreements were ratified by both parties thereto as of January 10, 1961. However, the process of integrating the provision of said Memorandum of Agreement which are to be incorporated into said Pacific Coast Longshore Agreement, said Master Agreement for Clerks and Related Classifications, and said miscellaneous related agreements has not been completed as of the date hereof. While expeditious completion of said process is anticipated by the parties hereto, they do not wish to delay the execution of

(Exh. 1-G, 1-2)

337a

Exhibit 1-G

said Supplemental Agreement on Mechanization and Modernization and implementation of the Plan until such time.

By reason of the premises, the Union and Association agree that, notwithstanding their execution of said Supplemental Agreement on Mechanization and Modernization and despite said provisions of paragraph (a) of Section 1 of Article VI, said provisions of said Memorandum of Agreement, which are to be incorporated into said Pacific Coast Longshore Agreement, said Master Agreement for Clerks and Related Classifications, and said miscellaneous related agreements, shall not be superseded but shall continue in full force and effect pending execution of said collective-bargaining agreements by the Union and Association.

[2] All other provisions of said Memorandum of Agreement are, however, in accordance with said provisions of paragraph (a) of Section 1 of Article VI, superseded by said Supplemental Agreement on Mechanization and Modernization, and, when said other collective-bargaining agreements have been completed and executed by the Union and Association, the provisions of said Memorandum of Agreement to be incorporated in said other collective-bargaining agreements shall be superseded as provided by said paragraph (a) of Section 1 of Article VI of said Supplemental Agreement on Mechanization and Modernization.

The signatures below of our respective duly authorized officers confirm our mutual agreement hereinabove set forth.

Very truly yours,

PACIFIC MARITIME ASSOCIATION
By s/ J. PAUL ST. SURE

Approved and Confirmed:

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION
By s/ HARRY BRIDGES

(Exh. 1-H, 1)

338a

Exhibit 1-H

[1] PACIFIC MARITIME ASSOCIATION
16 California Street
Phone Douglas 2-7973
San Francisco 11, Cal.

November 15, 1961

International Longshoremen's &
Warehousemen's Union
150 Golden Gate Avenue
San Francisco, California

Gentlemen:

As of the above date, the Union and Association executed the ILWU-PMA Supplemental Agreement on Mechanization and Modernization, and, pursuant to the provisions thereof, established the ILWU-PMA Vesting Benefit Trust and ILWU-PMA Supplemental Wage Benefit Trust. In accordance with said Agreement, the Association shall transfer to the various trusts to be employed for effectuation of the Plan substantial sums heretofore collected by the Association from Employers subject to said Agreement.

In transferring said sums to the respective trusts provided for by said Agreement, the Association is relying on certain rulings of the Internal Revenue Service, which are referred to in Section 6 of Article VI of said Agreement; the Association will submit the formal documents establishing the Plan to the Ruling Division of the Internal Revenue Service to obtain confirmation that such documents conform with the outline of the Plan set forth in the rulings heretofore obtained and that the rulings, therefore, remain in full force and effect. Further, the Association intends to request, and anticipates obtaining, a ruling under the Fair Labor Standards Act, as amended, in the form and for the

(Exh. 1-H, 1-2)

339a

Exhibit 1-H

purpose set forth in Section 9 of Article VI of said Agreement.

By reason of the premises, the Union agrees to adopt promptly with respect to any of the instruments required for implementation of the Plan whatever provisions, if any, are necessary to assure deductibility by the Employers of their Contributions to the Plan and to obtain said ruling under the Fair Labor Standards Act, as amended.

[2] The signatures below of our respective duly authorized officers confirm our mutual agreement hereinabove set forth.

Very truly yours,

PACIFIC MARITIME ASSOCIATION
By s/ J. PAUL ST. SURE

Approved and Confirmed:

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION
By s/ HARRY BRIDGES

(Exh. 1-I, 1)

340a

Exhibit 1-I

[1] **PACIFIC MARITIME ASSOCIATION**
16 California Street
Phone Douglas 2-7973
San Francisco 11, Cal.

November 15, 1961

International Longshoremen's &
Warehousemen's Union
150 Golden Gate Avenue
San Francisco, California

Gentlemen:

Pursuant to the provisions of paragraph (b), Section 2, Article II of the ILWU-PMA Supplemental Agreement on Mechanization and Modernization executed as of the above date, the parties hereto agree that Contributions to the Mechanization Fund shall be additions to the total amount of the Mechanization Fund to be accumulated by Member Companies under this Agreement, to the extent set forth herein if and when the same are made pursuant to arrangements negotiated by the Union and acceptable to the Association by the following companies:

1. OLIVER J. OLSON & Co., and/or the SS GEORGE OLSON and owners, the SS MARY OLSON and owners, et al (excluding Contributions attributable to cargoes carried between the continental United States and the Hawaiian Islands by any of them but not excluding a determination respecting any future expanded offshore trade of them in accordance with the provisions of this letter and said paragraph (b), Section 2, Article II.)
2. SAUSE BROS. OCEAN TOWING COMPANY, INC.
3. GRIFFITH STEAMSHIP COMPANY

(Exh. 1-I, 1-2)

341a

Exhibit 1-I

4. PACIFIC INLAND NAVIGATION Co. or INLAND TOWING COMPANY
5. NATIONAL METALS & STEEL CORPORATION
6. AL PEIRCE COMPANY
7. OWENS-PARKS LUMBER Co.
8. DAHL TRANSPORTATION
9. PUGET SOUND ALASKA VAN LINES
10. KOPPEL BROTHERS
- [2]11. ARCHER-DANIELS-MIDLAND Co.*
12. CARGILL, INCORPORATED *
13. CONTINENTAL GRAIN COMPANY *
14. LOUIS DREYFUS CORPORATION *
15. INTERIOR WAREHOUSE COMPANY *
16. Any company engaged in barge operations on inland waters of the Puget Sound, Columbia-Willamette Rivers, San Francisco Bay, or Los Angeles-Long Beach Harbor, and limited to Contributions attributable to service with respect to intra-state cargoes which they may be handling.
17. Any company which comes into existence after the date of execution of the Agreement and is not a Member Company and which is engaged in transporting or handling, in stevedoring or terminal operations, entirely new business, such as the movement of cargo in a revived "Chinatrade".

If any company specifically identified above or within the classes described by items 16 and 17 becomes a Member Company of the Association, all Contributions made

* A Pacific N. W. Grain Elevator Operator.

(Exh. 1-I, 2-3)

342a

Exhibit 1-I

thereafter by such company, as long as it remains a Member Company of the Association, shall not be an addition to the total amount of the Mechanization Fund to be accumulated by Member Companies of the Association.

If a Contribution, or portion thereof, by a company specifically identified above or within the classes described by items 16 and 17 is attributable to its growth hereafter by acquisition of business formerly conducted by a Member Company of the Association, then such Contribution, or portion thereof, shall not be an addition to, but shall reduce the total amount of the Mechanization Fund to be accumulated by Member Companies of the Association, while such company is not a Member Company.

Notwithstanding any provision hereof or of said paragraph (b), a Contribution, or portion thereof, by an Employer, or on the account of a Principal, which was a Member Company of the Association as of January 1, 1961, shall not, in any event, reduce or be an addition to the total amount of the Mechanization Fund to be accumulated by Member Companies of the Association under the Agreement but shall comprise a portion of said total amount.

[3] The signatures below of our respective duly authorized officers confirm our mutual agreement hereinabove set forth, which agreement is hereby acknowledged as being an integral part of the ILWU-PMA Supplemental Agreement on Mechanization and Modernization.

Very truly yours,

PACIFIC MARITIME ASSOCIATION
By s/ J. PAUL ST. SURE

Approved and Confirmed:
INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION
By s/ H. J. BODINE

(Exh. 1-J, 1)

343a

Exhibit 1-J

[1] (FIRST AMENDMENT TO ILWU-PMA SUPPLEMENTAL AGREEMENT ON MECHANIZATION AND MODERNIZATION)

THIS FIRST AMENDMENT TO ILWU-PMA SUPPLEMENTAL AGREEMENT ON MECHANIZATION AND MODERNIZATION, entered into as of the 1st day of January, 1961 by and between International Longshoremen's and Warehousemen's Union (hereinafter referred to as "Union"), representing Employees under the Plan, on behalf of itself and all longshore and marine clerks' Locals in California, Oregon and Washington, and Pacific Maritime Association (hereinafter referred to as "Association"), representing its Member Companies under the Plan,

WITNESSETH:

WHEREAS, the parties hereto executed on the 15th day of November, 1961 the ILWU-PMA Supplemental Agreement on Mechanization and Modernization (hereinafter referred to as "Agreement") and caused various trusts to be created, thereby establishing as of the 1st day of January, 1961 the Plan; and

WHEREAS, pursuant to the provisions of Section 3 of Article VI of the Agreement, the Union requested a review of the basic purposes of the Plan and proposed modifications thereto; and

WHEREAS, the parties hereto have agreed to certain modifications of said Agreement, to be effective as of January 1, 1962.

Now, THEREFORE, in consideration of the premises, the parties hereto agree as follows:

(Exh. 1-J, 2)

344a

Exhibit 1-J

[2] The following paragraph shall be, and hereby is, added as paragraph (c) of Section 1 of Schedule B, attached to said Agreement:

"(c) An Employee who could otherwise qualify as a Vestee entitled to a vesting benefit hereunder upon complying with the requirements of subparagraph (4) of paragraph (a) of Section 1 hereof but who does not then elect to remove himself from the active work force shall not be precluded at a later date from becoming a Vestee hereunder because he does not work a sufficient number of hours so as to comply with the requirements of subparagraphs (2) and (5) of said paragraph (a) between the date on which he could first become a Vestee and the date of his election to remove himself from the active work force, provided that he elects to so remove himself from the active work force on or before his 68th birthday or July 1, 1966, whichever first occurs."

Executed this 29 day of October, 1962.

For the Association:

S/ J. PAUL ST. SURE

For the Union:

S/ HARRY BRIDGES

(Exh. 2-D, 1)

345a

Exhibit 2-D

(MINUTES OF REGULAR QUARTERLY MEETING
OF
BOARD OF DIRECTORS
OF
PACIFIC MARITIME ASSOCIATION,
DECEMBER 12, 1962)

[1] Meeting No. 7

Time: December 12, 1962—10:00 A.M.

Place: 16 California Street, Room 202

Present: *Directors*

Messrs. W. B. Adams
David Gregory
Robert M. Richardson
S. F. Alioto
J. R. Page
George B. Schirmer
Fred R. Smith
Peter Howard
D. N. Lillevand
Fulton W. Wright

Alternates

Messrs. Arno Sieck
Hubert Brown
William R. Purnell, Jr.
J. E. Strowger

Capt. John Knox
E. H. Gluck
J. W. Dickover
Dale E. Collins

(Exh. 2-D, 1-2)

346a

Exhibit 2-D

Also

Present: Messrs. C. R. Redlich
E. Horsman

Staff: Messrs. St. Sure
 Goodenough
 Bourke
 MacEvoy
 Dellwig
 Cornell
 Holtgrave
 Saysette
 Lancaster
 Snyder
 Robertson

A quorum being present the meeting was called to order by the Chairman at 10:05 A.M.

[2] MEMBERSHIP CHANGES:

Weyerhaeuser Steamship Company

By letter dated November 28, 1962, Weyerhaeuser Steamship Company informed the Association that the name of the company had been changed to Weyerhaeuser Line, Division of Weyerhaeuser Company.

Consolidated Marine, Inc.

A letter of application for membership dated October 30, 1962, was received from Consolidated Marine, Inc.

It was moved, seconded and unanimously carried that Consolidated Marine, Inc. be admitted as a member of this Association with a waiver of the initiation fee.

(Exh. 2-D, 2-3)

347a

Exhibit 2-D

Olympic-Griffiths Lines, Inc.

Letter of resignation dated September 4, 1962, was received from Olympic-Griffiths Lines, Inc.

The Board of Directors accepted the resignation of Olympic-Griffiths Lines, Inc. with regret.

It was agreed that Mr. David Gregory would remain as a Director of this Association.

PACIFIC FOREIGN TRADE STEAMSHIP ASSOCIATION REPRESENTATION ON COAST EXECUTIVE COMMITTEE: The Chairman read a letter from the above Association dated November 30, 1962, suggesting that the Foreign Line Group be permitted two members on the Coast Executive Committee. The Chairman stated that a revision of the By-Laws is being considered but in the meantime it was agreed that the attendance of two members from the Foreign Line Group would be welcomed in meetings of the Coast Executive Committee.

CHANGE IN ALTERNATE DIRECTOR: By letter dated August 29, 1962, Mr. Worth Fowler has designated Mr. William R. Purnell, Jr., as [3] his alternate in place of Mr. J. F. Byrne.

BANK SIGNATURES — PACIFIC MARITIME ASSOCIATION — SOUTHERN CALIFORNIA: It was recommended that since Mr. C. J. Bourke had been transferred to Portland that Mr. Bruce C. Swafford be authorized as a third signature on Bank accounts in Southern California.

It was moved, seconded and unanimously carried that the above recommendation be approved.

MECHANIZATION FUND CONTRIBUTIONS:

Volkswagens

The Chairman stated that the Board of Directors had previously been informed of this situation in the meeting

Exhibit 2-D

of July 3, 1962. He then read a letter from Counsel of Marine Terminals Corporation, as well as a letter from PMA Counsel dated December 10, 1962.

Volkswagen has refused to pay the Mechanization Fund assessment. This Association filed suit against the stevedoring company in the United States District Court to recover the amounts of the assessments and the company in turn, impleaded Volkswagenwerk as the party ultimately liable. Volkswagenwerk answered the suit by contending that the assessments were illegal under the Shipping Act. It asked that the suit be stayed to permit proceedings before the Federal Maritime Commission to determine the legality of the assessments. The District Court granted Volkswagenwerk's request for a stay, on condition that proceedings be commenced before the Federal Maritime Commission by December 29. It is impossible to predict how long proceedings before the Commission might take. It was agreed that the Chairman will convene a meeting with PMA Counsel and stevedore Counsel to determine a course of action under the present situation.

[4] *Coastwise Lumber*

The Chairman reviewed the resolutions adopted at Meeting No. 4 July 3, 1962, respecting the contribution rate to the Mechanization Fund with respect to lumber moving in the coastwise trade and subject to penalty rates of \$1.00 per hour straight time and \$1.50 per hour overtime. It now appears that other lumber moving in the coastwise trade is subject to penalty rates of 28 cents per hour straight time and 42 cents per hour overtime with respect to which the contribution rate to the Mechanization Fund should be modified.

It was moved, seconded and unanimously carried that effective as of January 16, 1961, the contribution rate on all lumber moving in the coastwise trade between ports in Washington, Oregon and California shall be \$.05 per ton,

Exhibit 2-D

2½ cents of which is paid at the port of loading and 2½ cents at the port of discharging.* 1000 board feet of lumber shall constitute a ton. The coastwise trade shall be deemed, and be limited to, such trades to which the penalty rates of either \$1.00 per hour straight time and \$1.50 per hour overtime, or 28 cents per hour straight time and 42 cents per hour overtime, as set forth in the basic Longshore Agreement, pertain.

STEWARDS' LITIGATION: The Chairman stated that the question as to reimbursement of Counsel of individual member companies had been discussed in the previous meeting of July 3, 1962. The Chairman [5] stated as of yet there has been no solution to this problem.

After considerable discussion it was agreed that a Committee composed of Captain Dickover, and Messrs. W. Adams and P. Teige would make a recommendation to the Board of Directors on this matter.

SEAGOING PERSONNEL ASSESSMENT: The Chairman submitted a Schedule of Average Monthly Seagoing Personnel for the period September 30 through December 31, 1962, which in accordance with the By-Laws is used to determine seagoing personnel dues and voting strength for the fourth quarter of 1962.

It was moved, seconded and carried that the regular seagoing assessment be \$2.05 per man per month for the fourth quarter ending December 31, 1962.

STEWARDS TRAINING & RECREATION, INC.: The Chairman stated that the Association had been contributing \$5,000 per month to the support of Stewards Training & Recreation,

* When the commodity moves between Canada, Alaska, and the three Western States, the \$.05 per ton rate shall apply to either the loading or discharging, whichever is performed under the terms of the basic Longshore Agreement.

Exhibit 2-D

Inc. The MC&S Union has been advised that these contributions have ceased.

It was recommended that the 6¢ per man per day contribution for this purpose be discontinued as of November 30, 1962. The Board of Directors agreed to the discontinuance and further agreed that the disposition of the surplus in this Fund will be discussed at a later date.

STAFF SALARIES: The Coast Executive Committee has reviewed and approved a recommendation relative to the annual salary review. The proposal is that a sum not to exceed 5 per cent be approved, $\frac{1}{2}$ to be applied on an "across the board" basis, and the remainder, so far as necessary, be applied to adjust individual inequities over the next 12 month period. The $2\frac{1}{2}$ per cent "across the board" increase would become effective January 1, 1963.

[6] It was also proposed that general increases be discontinued in the future, and that a formal merit salary administration be substituted.

It was moved, seconded and unanimously carried that the above recommendations be approved.

PMA STAFF PENSIONS: The Chairman reported that in the past the Board of Directors has approved supplementing a staff member's pension to bring the pension to approximately 40 per cent of salary at time of retirement, including Social Security. The Association now is spending approximately \$1,600 a month for this supplementation.

It has been recommended and approved by the Coast Executive Committee that the PMA Staff Pension Plan be amended to provide for the purchase of past service annuities to correct present inadequacies and eliminate the prospective "supplemental allowances" now being given to retiring employees out of General Funds. The cost of this change would amount to approximately \$92,000 over a 10 year period.

(Exh. 2-D, 6-7)

351a

Exhibit 2-D

The Chairman also reported that three individuals are retiring as of January 1, 1963—Fred Bode in San Francisco, F. X. Foeller and Walter Emig in Portland. Using the practice of the Association over the past years, Mr. Bode's retirement allowance would amount to \$334.80, including Social Security. The supplemental allowance in this case would be \$122.60 per month. Mr. Foeller would require an additional \$20.65 per month and Mr. Emig would require an additional \$22.83 per month.

After discussion it was moved, seconded and unanimously carried that the Board of Directors endorse in principle the [7] proposal of purchasing past service annuities for the affected employees, and that staff prepare a summary of the Pension Plan with the facts concerning this matter for submission to the Board of Directors for their study and decision, and in addition, Messrs. Bode, Foeller and Emig on retiring January 1, 1963, be given the supplemental allowances referred to above with the understanding that if past service credits are purchased they will then come fully under the Pension Plan.

PACIFIC COAST DAYLIGHT TIME—OREGON: The Oregon Office of PMA has advanced \$3,000 on this account. It is now suggested that the collection of this amount be on a ship fee basis of \$5.00 per vessel's call. This fee would be payable by companies who hadn't otherwise contributed. The Board of Directors asked staff to advise the Portland Office that they had no objection to this.

Several Directors stated that in their opinion the Association should not get into this type of local activity in the future.

CONTRIBUTION TO INTER-ASSOCIATION UNEMPLOYMENT INSURANCE COMMITTEE: The Board of Directors approved the annual contribution of \$1,000 to the Inter-Association Unemployment Insurance Committee.

Exhibit 2-D

MECHANIZATION FUND CONTRIBUTIONS: The Chairman reported that the current contribution formula is meeting the requirement for payments into the Fund.

WALKING BOSS MECHANIZATION FUND CONTRIBUTIONS: The Chairman reported that contributions to the Walking Boss Mechanization Fund have been accumulated on the basis of 4¢ per ton during the year 1962.

It is recommended that effective January 1, 1963 the contribution rate be reduced from 4¢ per ton to 2¢ per ton.

It was moved, seconded and unanimously carried that the contribution rate to the Walking Boss Mechanization Fund be 2¢ [8] per ton effective January 1, 1963.

REPORT ON VARIOUS LABOR RELATIONS MATTERS: The Chairman commented briefly on the following subjects.

Several meetings have been held with the Direct Employers concerning the Conformance Program and liquidated damages. It has been agreed that a Sub-Committee will meet in San Francisco to arrive at procedures and recommendations. The Chairman felt that progress was being made. He also stated that a Direct Employer had been added as a member of each Sub-Steering Committee, including the Coast Steering Committee.

A productivity study will be available in January giving the full year comparison 1960-1961 by quarters and by areas. A Sub-Committee is examining the reporting system for any improvement that can be devised.

It has been agreed in C.L.R.C. to register not more than 1,000 men on the Pacific Coast. Agreement has been reached with the ILWU that this will be done without an additional charge under the Mechanization Fund, and no liability will exist to the Fund under the wage guarantee. This is merely a stopgap to correct a problem and a study committee has been named to come up with a complete formula.

(Exh. 2-D, 8-9)

353a

Exhibit 2-D

The Coast Arbitrators and the Area Managers met with the ILWU and PMA staff to discuss problems of interest to the parties. PMA staff and Coast Steering Committee feel that this was a very worthwhile meeting.

The Marine Firemen and Sailors working rule discussions have been completed. There are still some problems remaining with the MC&S.

[9] Secretary of Labor W. Willard Wirtz has handed down his Award on six items referred to him under the MM&P Agreement.

PAYMENT OF ASSESSMENTS TO ASSOCIATION: It was suggested that member steamship companies directly pay to the Association all assessments that can be handled in this manner. It was agreed that staff will check this situation and report back.

PMA BUILDING—SOUTHERN CALIFORNIA: It was reported that the lot has been purchased and the architect is engaged in drawing up plans for final approval, following which bids will be solicited. The lease on present quarters runs until April, 1963.

Meeting adjourned at 12:10 P.M.

(Signed) J. A. Robertson

J. A. ROBERTSON

Secretary

JAR:ah

Exhibit 2-F

(MINUTES OF MEETING OF BOARD OF DIRECTORS AND
AMERICAN FLAG OPERATORS OF
PACIFIC MARITIME ASSOCIATION, JULY 3, 1962)

[1] Meeting No. 4

Time: 10:00 A.M., July 3, 1962

Place: 16 California Street, Room 202

* * *

[4] MECHANIZATION FUND CONTRIBUTIONS—REPORT OF
FUNDING COMMITTEE: The Chairman reported that Mechanization Fund contributions are now being collected on government cargoes.

Coastwise Lumber

The Chairman reported the considerations of the Funding Committee respecting the rate of assessment to be employed for [5] the determination of contributions to the ILWU-PMA Mechanization Fund by Employers rendering cargo-handling services involving Coastwise movements of lumber. It appeared that during the last decade a penalty rate of \$1.00 per hour straight time and \$1.50 per hour overtime has been charged for the handling of such cargoes, which rate was first established by collective bargaining as a consequence, in part, of improved methods of handling lumber shipped in the coastwise trade. Further, it appeared no other type of cargo is subject to a similar penalty rate. By reason of the premises the Funding Committee recommended a reduction in the rate of contributions to the Mechanization Fund with respect to cargo-handling services rendered cargoes of coastwise lumber.

It was moved, seconded and unanimously carried that effective as of January 16, 1961, the contribution rate on

(Exh. 2-F, 5-6)

355a

Exhibit 2-F

all lumber moving in the coastwise trade shall be \$.05 per ton, 2½¢ of which is paid at the port of loading and 2½¢ at the port of discharging. 1000 board feet of lumber shall constitute a ton. The coastwise trade shall be deemed, and be limited to, such trades to which the penalty rates of \$1.00 per hour straight time and \$1.50 per hour overtime, as set forth in the basic longshore agreement pertain.

Volkswagens

The Board of Directors were also informed that various companies on the Pacific Coast handling Volkswagens had made no contribution to the Mechanization Fund.

The Coast Steering Committee in meeting on March 27, 1962, agreed that staff should write a letter to Marine Terminals Corporation advising that Company that the Funding Committee had [6] again reconsidered the Mechanization Fund assessment on unboxed automobiles and did not recommend any change in the present assessment. This letter has been sent.

The Coast Steering Committee further recommended that the Board of Directors modify their previous action so as to provide that PMA Counsel assist Marine Terminals Corporation (and other stevedoring companies handling Volkswagens) only if any action by or against Marine Terminals raises issues which jeopardize the Mechanization Plan or other interests of the industry, in which case PMA Counsel be authorized to intervene and, if necessary, assume responsibility for handling that portion of the action involving such issues. If PMA Counsel does not act in such circumstances, the Association reserves the right to institute action against such member companies if the companies themselves are still in default of the Mechanization Fund Assessments.

It was moved, seconded and unanimously carried that the recommendation of the Coast Steering Committee be approved.

* * *

Exhibit 2-H

(MINUTES OF REGULAR MEETING

OF

BOARD OF DIRECTORS

OF

PACIFIC MARITIME ASSOCIATION, DECEMBER 13, 1961)

[1] Meeting No. 11

Time: 10:00 A.M.—December 13, 1961

Place: 16 California Street, Room 202

Present: Directors

* * *

[4] WALKING BOSS AGREEMENT: The Chairman reported that after several months of negotiations agreement had been reached with the Walking Bosses in regard to a mechanization fund and requested authorization of the Board to sign said agreement. There being no objection, the agreement was approved.

MECHANIZATION FUND—NON-MEMBER CONTRIBUTION: The Chairman read a communication from the Funding Committee covering the problem of collecting funds from Volkswagen due the Mechanization Fund. After discussion it was decided that the method of contribution originally established for this type of cargo should be maintained. Marine Terminals requested that a letter covering this discussion be forwarded to them and that they be authorized to bring suit against Volkswagen for the monies due. Marine Terminals also requested that PMA give both legal and moral support on the Volkswagen suit. It was agreed that PMA will give such support and will participate in any legal action taken and that the matter will be turned over to PMA Legal Counsel.

(Exh. 2-H, 4-5)

357a

Exhibit 2-H

Further in regard to the Mechanization Fund there was discussion about contributions on clerks' hours. Such discussion [5] was based on a memorandum dated December 13, 1961 (copy attached). Mr. Peter Teige, Chairman of the Funding Committee, explained the reasons for the changes in contribution rates covered in said memorandum and it was moved, seconded and carried that the rates referred to in the subject memo become effective as of December 18, 1961.

Further on the Mechanization Fund the Chairman reported that in the November 7, 1961 meeting of the Board the Funding Committee had made five recommendations, 4 of which had been adopted with the fifth one being held over for further discussion. Mr. Teige reported that the Funding Committee had made further study of the held over question; namely, a procedure for penalties where payments are delinquent. After review by the Board of the Funding Committee's revised proposal it was moved, seconded and carried that a policy be inaugurated whereby amounts due the M & I Fund which had not been paid 90 days from the end of the month in which the work was performed will be considered delinquent and such employers shall be charged liquidated damages, including interest on the amount delinquent, at the rate of 1% per month, or any portion of a month, commencing on the date of delinquency. Excluded from these penalties were the delinquencies on Army and Navy contracts and the Volkswagen delinquency pending final disposition of these accounts.

Meeting adjourned at 12 noon.

/s/ B. H. GOODENOUGH
B. H. GOODENOUGH

BHG:rr

(Exh. 2-I, 1)

358a

Exhibit 2-I

(MINUTES OF MEETING OF BOARD OF DIRECTORS OF PACIFIC
MARITIME ASSOCIATION, NOVEMBER 7, 1961)

[1] Meeting No. 10

Time: November 7, 1961—10:30 a. m.

Place: 16 California Street, Room 202

Present: *Directors*

Messrs. Clarence Morse

John Page

Harmon Howard

Alternates

Messrs. Dale E. Collins

Wayne L. Horvitz

Owen F. Niemann

John Knox

Arno Sieck

J. F. Byrne

E. J. Spear

Robert M. Richardson

A. C. Fenger

George T. Littlejohn

Also

Present: Hubert Brown

Staff: Messrs. J. Paul St. Sure

B. H. Goodenough

Ralph Holtgrave

K. F. Saysette

Pres Lancaster

J. A. Robertson

A quorum being present the meeting was called to order by the Chairman at 10:40 a.m.

Exhibit 2-I

MEMBERSHIP:

Shaffer Terminals

The resignation of Shaffer Terminals by letter dated October 6, 1961 was accepted.

[2] Tacoma Stevedore & Terminal Co.

An application for membership received from Tacoma Stevedore & Terminal Co. under date of October 9, 1961, was approved with a waiver of the initiation fee, because of a transfer of membership from Shaffer Terminals.

Columbia Basin Terminals

The resignation of Columbia Basin Terminals dated September 13, 1961 was accepted.

Stockton Bulk Terminal Co. of California

An application from Stockton Bulk Terminal Co. of California dated February 10, 1961, was approved subject to satisfactory discussions with the ILWU and the Company, because of the existence of a separate contract the Company has with the ILWU.

CENTRAL RECORDS OFFICE EQUIPMENT: By mailing of October 17, 1961, the Board was apprised of a recommendation for the modernization of Central Records office equipment at Portland and Wilmington.

It was moved, seconded and unanimously carried that authority be granted to proceed in line with the recommendation and the schedule.

ILWU-PMA PENSION CONTRIBUTION: The Chairman stated that the Agreement reached with the ILWU on Pensions had been previously reported to the Board of Directors. An increase of 5¢ per manhour as the cost of increased benefits agreed to in the pension reopeners and 3¢ increased contribution due to a shrinking manhour base

(Exh. 2-I, 2-3)

360a

Exhibit 2-I

are necessary. Thus, it is recommended that the contribution to the ILWU-PMA Pension Fund be 23¢ per manhour [3] effective 8:00 a.m., Monday, November 13, 1961.

It was moved, seconded and unanimously carried that the ILWU-PMA Pension Fund contribution be at the rate of 23¢ per manhour effective 8:00 a.m., Monday, November 13, 1961.

APPOINTMENT OF TRUSTEES

ILWU-PMA WELFARE PLAN

Messrs. Hubert Brown and K. F. Saysette are currently serving, and J. A. Robertson was approved as a trustee in place of J. P. Cribbin.

ILWU-PMA PENSION PLAN

Messrs. K. F. Saysette and B. H. Goodenough are presently serving as Employer trustees. The Board of Directors approved the appointment of Hubert Brown and J. A. Robertson (as replacement for B. H. Goodenough) as Employer trustees on the Fund.

ILWU-PMA VESTING BENEFIT TRUST

ILWU-PMA SUPPLEMENTAL WAGE BENEFIT TRUST

The Board of Directors approved Messrs. K. F. Saysette, R. J. Pfeiffer and Captain C. Pryor as Employer trustees of these Funds.

REPORT OF FUNDING COMMITTEE: The Chairman reported that a report has been filed by the Funding Committee under date of July 18, 1961, in accordance with action of the membership on January 10, 1961. This report states that the Committee, as of this time, has no new suggestions to make for changes in the present formula. The Funding Committee will continue to discuss this subject.

• • •

(Exh. 2-I, 3-4)

361a

Exhibit 2-I

RECOMMENDATIONS OF FUNDING COMMITTEE: The Funding Committee as of August 1, 1961, made the following recommendations:

[4] (1) A new policy be inaugurated whereby amounts due the M & I Fund which have not been paid after 30 days from the end of the month in which they accrued shall at that time be deemed delinquent and such employers shall be charged liquidating damages, including interest on the amount delinquent at the rate of 1 per cent per month, or any portion of a month, commencing at the date of delinquency.

(2) A report showing the names of delinquent employers and the amount of delinquency be distributed to the membership if the employer has amounts still delinquent 30 days after the date of original delinquency.

(3) Price Waterhouse & Co. conduct a spot-check of tonnage declarations by investigating the declarations of approximately 15 employers a year, subject to holding the total expenditure for the year to \$5,000 or less. Price Waterhouse & Co. had indicated they could check an average employer for about \$300. The Committee further recommended that it might be well to have the spot-checks for this year made as soon as possible.

(4) For fund assessment purposes, Army conexes (except those shipped on a Government Bill of Lading) be treated the same as commercial *carrier loaded* containers.

(5) In view of the hardship on the part of the Army to determine the actual measurement of the cargo placed in containers, they be permitted to determine the contents based on periodic checks of the

Exhibit 2-I

actual *average* measurement and the use of the average percentage of utilization of the total capacity of the containers as the basis for the assessment on this containerized cargo.

It was moved and seconded that recommendations (2) through (5) be approved and that recommendation (1) be the subject of further discussion by the Committee. Unanimous.

MECHANIZATION FUND CONTRIBUTIONS ON VOLKSWAGENS: The Board of Directors was informed that the Volkswagen firm has refused to pay Mechanization Fund contributions on Volkswagens [5] stevedored by Marine Terminals (and in the Northwest by Seattle Stevedoring and Brady Hamilton). The Board of Directors agreed that the stevedoring companies should take such action as they deem best in the protection of their interest and further that this matter should be discussed with Counsel and the Funding Committee.

STAFF SALARIES: The Chairman recommended that staff, excluding the Chairman, be granted a 4 per cent general increase as of November 1, 1961.

It was moved, seconded and unanimously carried that the recommendation for a staff salary increase be approved.

ROGERS ET AL v. ALASKA STEAMSHIP COMPANY, ET AL: The Chairman explained that this litigation had been going on for a number of years. Two sets of cases were involved; one before the State Court which has been dismissed—the other in the Federal District Court. The Supreme Court has denied a writ of certiorari which leaves one possible individual case which should not be serious.

(Exh. 2-I, 5-6)

363a

Exhibit 2-I

RETIREMENTS:

J. H. Travers

The Chairman explained that Mr. J. H. Travers, at his request, retired on June 1, 1961, having been employed by the Association since May 15, 1930. His age at date of retirement was approximately 61½ years. The Chairman pointed out to the Board that the Association in the past has subsidized individuals on retirement in an amount sufficient to provide approximately 40 per cent of salary at date of retirement, after taking into consideration benefits received under the Federal Social Security Act.

[6] Mrs. Rhoda Jennet

Mrs. Jennet of the Accounting Department desires to retire effective January 1, 1962, due to ill health. Her age at retirement will be 62 years. She has been employed by the Association for 25 years. In order to maintain the 40 per cent formula, a contribution from PMA of \$70.00 per month is required.

It was moved, seconded and unanimously carried that the Association pay \$50.00 per month to J. H. Travers, effective July 1, 1961, and \$70.00 per month to Mrs. Rhoda Jennet, effective January 1, 1962.

MATTER CONTAINED IN INVESTIGATING COMMITTEE'S REPORT OF 8/12/61:

M. S. PHILIPPINE MARU—August 15-16, 1960

Williams, Dimond & Co.

It was moved, seconded and carried:

That Williams, Dimond & Co. is guilty of violating the 'Rules of Labor Policy' as found by the Investigating Committee in its written report dated August 12, 1961;

That liquidated damages in the sum of \$5,000.00 are payable by the company to the corporation for

Exhibit 2-I

the account of the members of said corporation, as provided in Article XI, Section 5 of the By-Laws;

That said sum of \$5,000.00, as liquidated damages and not as a penalty, be paid within ten days after receipt of written demand therefor from the corporation;

That if said violations continue or are renewed after receipt by said company of notice of this action and demand, that appropriate additional damages shall be payable in accordance with the provisions of Article XI, Section 5 of the By-Laws.

SEAGOING PERSONNEL ASSESSMENTS: The average monthly seagoing personnel for the quarter ending September 30, 1961, for purposes of voting strength, and also for the basis for monthly assessments for the quarter ending December 31, 1961 was distributed.

[7] It was moved, seconded and unanimously carried that the seagoing personnel assessment be \$1.50 per man per month for the fourth quarter ending December 31, 1961.

PALLET BOARDS: The Chairman reported that discussion has occurred in the Coast Executive Committee and Coast Steering Committee as to the use of a universal type of board and a study of the methods of cargo handling to take full advantage of the ILWU-PMA Agreement. The Board of Directors expressed interest and agreed that PMA should explore this subject and report back.

Meeting adjourned at 12:15 p. m.

J. A. Robertson,
J. A. ROBERTSON,
Secretary

JAR:ah

(Exh. 2-K, 1, 4)

365a

Exhibit 2-K

(MINUTES OF MEETING OF BOARD OF DIRECTORS OF PACIFIC
MARITIME ASSOCIATION, JULY 11, 1961)

[1] Meeting No. 6

Time: July 11, 1961—2:00 P. M.

Place: 16 California Street, Room 202

* * *

[4] FUNDING—MODERNIZATION & IMPROVEMENT FUND

The Chairman reported that the report of the Funding Committee would be passed until the next meeting of the Board of Directors. The Funding Committee will be asked to investigate the refusal of certain Direct Employers to pay the M & I Fund Assessments. Likewise, the question of employing certified public accountants to check tonnage declarations made by companies to substantiate the tonnage declarations and contributions paid was referred to the Funding Committee for recommendation.

* * *

Exhibit 2-L

**(MINUTES OF ANNUAL MEETING OF MEMBERS OF PACIFIC
MARITIME ASSOCIATION, MARCH 8, 1961)**

[13] Time: March 9, 1961—10:00 A.M.

Place: 16 California Street, Room 202

* * *

[16] REPORT OF COMMITTEE ON FUNDING: The report of this Committee was presented to the President under date of March 3, 1961, containing the following recommendations:

1. That empty Army conexes be placed on the same basis for assessment purposes as empty commercial containers owned by steamship carriers.
2. That Army conexes containing cargo be assessed in the same manner as commercial containers moving in the trade; namely, on a manifested measurement or (weight, as the case may be) basis of the cargo therein contained.

[17] 3. That coastwise cargo be assessed in the traditional manner at the rate of one-half of the Work Improvement Fund rate for offshore and intercoastal cargo; that is, a single ton of coastwise cargo would pay a total of 27½¢ assessment, one-half at the point of loading and the other half at the point of discharge.

4. The Committee recommends no change in the method of assessment of the other cargoes discussed in their report.

It was moved, seconded and carried that the changes as recommended by the Committee on Funding be approved.

Exhibit 2-L

The Chairman stated that W. R. Chamberlin & Co. will be placed in a non-competitive position if non-members of PMA reach a different settlement with the ILWU. The ILWU has been contacted and said they will reach no different agreement with non-members.

* * *

[18] MODERNIZATION AND IMPROVEMENT FUND—METHOD OF CONTRIBUTIONS: The Chairman explained that the Bureau of Internal Revenue has indicated, through counsel, that in order to secure deductibility [19] of contributions on a tonnage basis to the Fund, such contributions will have to be made by the employers of the various employees who will derive benefits from these contributions. This method would vary from the previous action taken by the Board of Directors in this matter when a motion was passed to the effect that contributions would be made in the same manner as those being made to the Association for tonnage dues purposes, which was by the member steamship companies or by the contracting stevedores reporting tonnages for non-member steamship companies.

In order to guarantee deductibility of contributions it is now necessary to modify the reporting and payment procedures in such a way that the contracting stevedore will make the contributions to the Association, not only for tonnage handled for member companies, but also for non-members.

It was moved and seconded that the member contracting stevedores will make contributions to the Association on a tonnage basis to the Modernization and Improvement Fund for member steamship companies, as well as non-member steamship companies. The motion was amended with the consent of the second that the steamship companies will send a check to the contracting stevedore at the same time as the advice notice is sent.

(Exh. 2-L, 19-20)

368a

Exhibit 2-L

During discussion of the motion and the amendment the suggestion was made that the check should be drawn jointly to the stevedore and to the Fund. Suggestions were likewise made to the effect that the steamship companies be asked to make funds available to their stevedores for the payments. Following discussion vote on the motion was taken and the motion carried.

[20] The Chairman also referred to the current difficulties being experienced by the Treasurer in collecting the contributions to the Mechanization and Modernization Fund.

Meeting adjourned at 12:15 P. M.

/s/ J. A. Robertson
J. A. ROBERTSON,
Secretary.

JAR:ah

(Exh. 2-N, 1)

369a

Exhibit 2-N

(MINUTES OF MEETING OF BOARD OF DIRECTORS
PACIFIC MARITIME ASSOCIATION, JANUARY 16, 1961)

[1] Meeting No. 3

Time: January 16, 1961—11:00 A.M.

Place: 16 California Street—Room 202

Present: *Directors*

Messrs. W. B. Adams
J. Wyand
S. F. Alioto
David Lindstedt
George B. Schirmer
Harmon K. Howard
Charles L. Tilley

Alternates

Messrs. Dale E. Collins
W. L. Horvitz
John Knox
David Gregory
E. H. Gluck
Hubert Brown
J. F. Byrne
C. R. Redlich

Also

Present: Mr. John Page

Staff: Messrs. J. Paul St. Sure
K. F. Saysette
Pres Lancaster
J. A. Robertson

A quorum being present the meeting was called to order by the Chairman at 11:05 A.M.

Exhibit 2-N

The Chairman stated that by letter to the Board of Directors dated January 12, 1961, it was explained that at a Membership Meeting on January 10, 1961, a question was raised as to the definition of bulk cargoes, and whether scrap iron, pig iron and steel shavings should be considered as bulk. This question was left to the determination of the Board of Directors.

[2] The Chairman stated that by definition for tariff purposes scrap iron and pig iron are bulk commodities. The tariff definition reads in part "... which by nature of their unsegregated mass are usually handled by shovels, scoops, buckets, forks, magnets or other mechanical conveyors and which are loaded or unloaded and carried without wrapper or container and received and delivered by carriers without transportation mark or count." A number of telegrams and letters have been received on this matter of the classification of scrap.

It was pointed out that if scrap was classified as a bulk commodity, the general cargo rate for contributions would become 27½ cents rather than 26¾ cents, and the bulk rate would be 5½ cents.

Considerable discussion then ensued, and it was mentioned that if one commodity is changed, there might be others raised for similar consideration. Automobiles had already been the subject of discussion. The suggestion was made that the Sub-Committee for the determination of the method of funding be called back into session immediately to review the entire question, and to issue a report to the Membership 30 days prior to the six month review date.

It was moved and seconded that unpackaged scrap metal, such as scrap iron and pig iron, handled by shovels, scoops, buckets, forks, magnets or mechanical conveyor and not in containers which are loaded or unloaded and carried without wrapper or container and without transportation mark or count is to be classified as a bulk cargo, and that the

Exhibit 2-N

rate of contribution to the Fund be 27½ cents on general cargo and 5½ cents on bulk cargo effective as of January 16, 1961.

[3] Vote on the motion: 12—yes

0—no

3—withheld

Motion carried.

It was agreed that the present Sub-Committee on funding, or a new Committee, would begin functioning immediately.

It was agreed that the tonnage declarations made by companies are to be made in exactly the same manner as manifested and reported during the year 1959, and any changed method of manifesting from that date will not be valid for reporting tonnages covering the fund contributions. It was further agreed that the Association assessment as to the inclusion of scrap metal in the bulk classification will be changed in conformity with the motion.

It was agreed that the Association may employ certified public accountants to check tonnage declarations made by companies to substantiate the tonnage declarations and contributions paid.

It was reported to the Board of Directors that the Association will refund to contributing Direct Employers the contributions paid on the basis of 6½ cents per manhour from June 15, 1960 to December 31, 1960, and that the 6½ cents per manhour contribution has been discontinued as of January 2, 1961.

It was agreed that the contributions to the Fund will be effective as of January 16, 1961 on all vessels which have commenced loading or discharging cargoes on and after that date. Any operation which started prior to January 16, 1961 will not be affected by the contribution.

[4] It was pointed out that there will be no changes in operation under the new Agreement until notice is received

(Exh. 2-N, 4, Exh. 2-O, 1)

372a

Exhibit 2-O

from the Coast Steering Committee. The Coast Steering Committee will attempt to make changes effective January 30, 1961.

Meeting adjourned at 12:20 P.M.

J. A. ROBERTSON
Secretary

JAR:ah

Exhibit 2-O

(MINUTES OF MEETING

OF

MEMBERS

OF

PACIFIC MARITIME ASSOCIATION, JANUARY 10, 1961)

[1] Meeting No. 2

Time: January 10, 1961—10:00 A.M.

Place: 16 California Street—Room 202

Present: *Company*

Messrs.

T. W. Buchholz

Metropolitan Stevedore Company

E. F. Ebbey

California Steve. & Ballast Co.

George B. Plant

M & R Services, Inc.

R. C. Clapp

Rothschild-International Steve.

Jens Feragen

Fred Olsen Line Agency, Ltd.

Jens Feragen

Maersk Line (Fred Olsen Line

Agency, Ltd., Agents)

Elliott J. Spear

N.Y.K. Line

Elliott J. Spear

International Terminals, L.A.

(Exh. 2-O, 1)

373a

Exhibit 2-O

<i>Messrs.</i>	<i>Company</i>
David Lindstedt	Blue Star Line, Inc.
S. F. Alioto	Interocean Line
S. F. Alioto	Crescent Wharf & Warehouse
S. F. Alioto	Outer Harbor Dock & Wharf, Inc.
Hubert Brown	Pacific Far East Line
Peter N. Teige	American President Lines
J. C. Strittmatter	Consolidated Stevedoring Co.
Gohta Yamada	Mitsui Line
J. E. Slevin	
W. K. Varcoe	Williams, Dimond & Co.
G. Eberhard	Seaboard Stevedoring Corp.
G. Eberhard	Pacific Ports Service Co.
J. F. Byrne	American Mail Line
W. L. Horvitz	Matson Navigation Co.
R. J. Pfeiffer	Matson Navigation Co.
H. B. Copsey	Jones Stevedoring Co.
A. H. Jones	Jones Stevedoring Co.
K. B. Kristensen	East Asiatic Co., Inc.
E. L. Bargones	Transpacific Transportation Co.
E. L. Bargones	Pacific Oriental Terminal Co.
E. L. Bargones	Indies Terminal Co.
A. L. Wise	Kerr Steamship Company
A. L. Wise	Kawasaki Kisen Kaisha, Ltd.
F. R. Noyes	States Marine Lines
J. B. Wyand	Luckenbach SS Co., Inc.
J. C. Gallagher	Associated Banning Co.
H. P. Schnitler	States Steamship Company
H. P. Schnitler	Pacific Atlantic SS Co.
H. P. Schnitler	Portland Stevedoring Co.
J. F. Litz	Interocean Line
Harmon K. Howard	Howard Terminal
G. Jones	Jones Stevedoring Co.
J. W. M. Schorer	Holland-America Line
O. I. M. Porton	Royal Mail Lines, Ltd.

Exhibit 2-O

<i>Messrs.</i>	<i>Company</i>
James West	Furness Withy & Co., Ltd.
George Littlejohn	Grace Line
George Littlejohn	Johnson Line
[2] D. Ward	American President Lines
E. H. Gluck	Moore McCormack
W. B. Adams	Pope & Talbot
Frank Domingo	Parr Richmond Terminal
S. J. Meyer	Parr Richmond Terminal
W. L. Treverton	Knutsen Line
H. B. Harris	Knutsen Line
H. B. Harris	Lino Lines
Ian Back	Union SS Co. of N.Z., Ltd.
R. Fielding	Balfour, Guthrie & Co., Ltd.
R. Fielding	Flota Mercante Grancolombiana
R. Fielding	North German Lloyd
R. Fielding	Hamburg Amerika Line
Robert Douglas	Encinal Terminals
C. R. Redlich *	*Marine Terminals Corporation
E. G. Horsman *	*Marine Terminals Corp., of L. A.
	*General Stevedore & Ballas
	*Bulk Handlers
Daniel K. Moore	Star Terminal Co.
Daniel K. Moore	Canadian Gulf Line
David Gregory	Olympic Griffiths Lines
David Gregory	Olympic Steamship Co., Inc.
David Gregory	Salmon Terminals, Inc.
W. G. Fahy, Jr.	S. F. Stevedoring Co.
C. H. Gielow	S. F. Stevedoring Co.
H. A. Gade	S. F. Stevedoring Co.
Guy Flandreau	French Line
George B. Schirmer	Schirmer Steve. Co.
George B. Schirmer	Ocean Terminals
George B. Schirmer	Yerba Buena Corporation
George B. Schirmer	Oregon Steve. Co.

*Exhibit 2-O**Messrs.*

L. R. Richards
 John D. Knox
 John D. Knox
 John D. Knox
 L. R. Richards
 L. R. Richards
 L. R. Richards
 Allan K. Hulme **
 J. R. Page **

Company

Overseas Shipping Co.
 Weyerhaeuser Steamship Co.
 Independent Stevedore Co.
 Humboldt Stevedore Co.
 Fern-Ville Lines
 Klaveness Line
 Barber Line
 **Pacific Orient Express Line
 **Pacific Islands Transport Line
 **Italian Line
 **French Line
 **Daido Line

Also Present:

R. W. Cabell
 Clyde Jacobs
 L. R. Schinazi, Jr.
 R. Thaning
 C. C. Martin
 R. F. Hubbard

International Shipping Co.
 Crown Zellerbach Corp.
 Overseas Central Enterprise, Inc.
 Transatlantic S.S. Co.
 The Standard Slag Co.
 Cargill Inc.

[3] Staff:

Messrs. J. Paul St. Sure
 B. H. Goodenough
 K. F. Saysette
 Richard Ernest
 J. H. Travers
 Pres Lancaster
 J. A. Robertson

A quorum being present the meeting was called to order by the Chairman at 10:00 A.M.

DETERMINATION AS TO METHOD OF CONTRIBUTION TO ILWU-PMA MODERNIZATION AND IMPROVEMENT FUND:
 The Chairman reported that the Board of Directors had previously approved the Agreement between the PMA

Exhibit 2-O

and ILWU of October 18, 1960, but had left the question of the method of contributions to the Fund for membership action.

A Sub-Committee to recommend the method of funding has been working for approximately two months and reported to the Board of Directors at its meeting on January 6, 1961. The Board of Directors after considering the Majority and Minority Report of the Sub-Committee voted: "That the collection of the Fund be based on a tonnage formula with all tonnage being treated equally as to rate for a period of six months, and during this interim further studies will be made on this subject."

Considerable discussion then developed concerning the Majority and Minority recommendations of the Committee and the position of the bulk carriers.

It was regularly moved and seconded that the Majority recommendation of the Committee appointed to propose a method for collection of the Fund, calling for a tonnage formula with bulk cargoes at one-fifth the general cargo rate, be adopted, with the understanding that the method of collection will receive continued [4] study and be presented to the Membership again in six months.

The Chairman explained the three recommendations which had been made:

1. *Majority Report* (on which the motion is based)
26 $\frac{3}{4}$ ¢ on general cargo
5 $\frac{1}{2}$ ¢ on bulk
2. *Minority Report*
10¢ a ton
12¢ per manhour
3. *Board of Directors*
20¢ a ton

(Exh. 2-O, 4)

377a

Exhibit 2-O

It was further agreed that the Board of Directors would examine and determine the definition of bulk cargoes.

At this time a secret ballot was taken and the vote was polled as follows:

246	yes
74	no
21	withheld
67	absent

Motion carried by a majority of the total voting strength of the Association Membership.

The Chairman announced that the motion would be construed to mean that if a different method of contribution should be adopted 6 months hence, it would not have retroactive application.

RATIFICATION OF ILWU-PMA AGREEMENT:

It was moved, seconded and unanimously carried by voice vote that the Agreement of October 18, 1960, between the PMA and ILWU be ratified.

Meeting adjourned at 11:50 A.M.

/s/ J. A. ROBERTSON
J. A. Robertson
Secretary

JAR:ah

(Exh. 2-P, 1)

378a

Exhibit 2-P

(MINUTES OF MEETING OF BOARD OF DIRECTORS PACIFIC MARITIME ASSOCIATION)

[1] Meeting No. 1

Time: January 6, 1961—10:00 A.M.

Place: 16 California Street, Room 202

Present: *Directors*

Messrs. W. B. Adams
J. Wyand
Clarence Morse
S. F. Alioto
David Lindstedt
George Schirmer
Harmon K. Howard

Alternates

Messrs. Dale Collins
W. L. Horvitz
John Knox
David Gregory
E. H. Gluck
J. W. Dickover
J. F. Byrne
C. E. Luddy
C. H. Gielow
C. R. Redlich
G. T. Littlejohn

(Exh. 2-P, 1-2)

379a

Exhibit 2-P

Also

Present: Messrs. Hubert Brown
E. L. Bargones
F. Weldon
O. Porton
P. Tiege
L. Richards
J. Page
E. F. Ebey
J. Feragen
I. Back

Staff: Messrs: J. Paul St. Sure
B. H. Goodenough
K. F. Saysette
P. Lancaster
R. Ernst
J. A. Robertson

[2] A quorum being present the meeting was called to order by the chairman at 10:10 A.M.

APPLICATIONS FOR MEMBERSHIP: Letter of application dated December 28, 1960, has been received from Kawasaki Kisen Kaisha, Ltd. (Kerr Steamship Company, Inc., General Agents) and letter of application dated January 4, 1961, has been received from Iino Lines (Bakke Steamship Corporation, Agents.)

It was moved, seconded and unanimously carried that these companies be admitted as members of the Association.

RECOMMENDATION AS TO METHOD OF CONTRIBUTION TO ILWU-PMA MODERNIZATION AND IMPROVEMENT FUND: The Chairman reported the ILWU had formally ratified the Agreement and as a result the Association is under considerable pressure to determine the method of assessment for contributions to the Fund, as well as ratification of

Exhibit 2-P

the Agreement. The Coast Steering Committee has been meeting on the details of the new Agreement, having met yesterday for an all day session and will meet again this afternoon.

The Board of Directors has received copies of the Sub-Committee report as to the method of funding. The report consisted of two documents—a Majority and Minority Report.

A Membership Meeting has been called for Tuesday morning, January 10, 1961, at 10:00 A.M.

Considerable discussion then developed as to the recommendations of the Majority and Minority of the Sub-Committee.

It was moved and seconded that the collection of the Fund be based on a tonnage formula with all tonnage being treated equally as to rate for a period of six months, and during this interim further studies will be made on this subject.

[3] Vote on the motion:

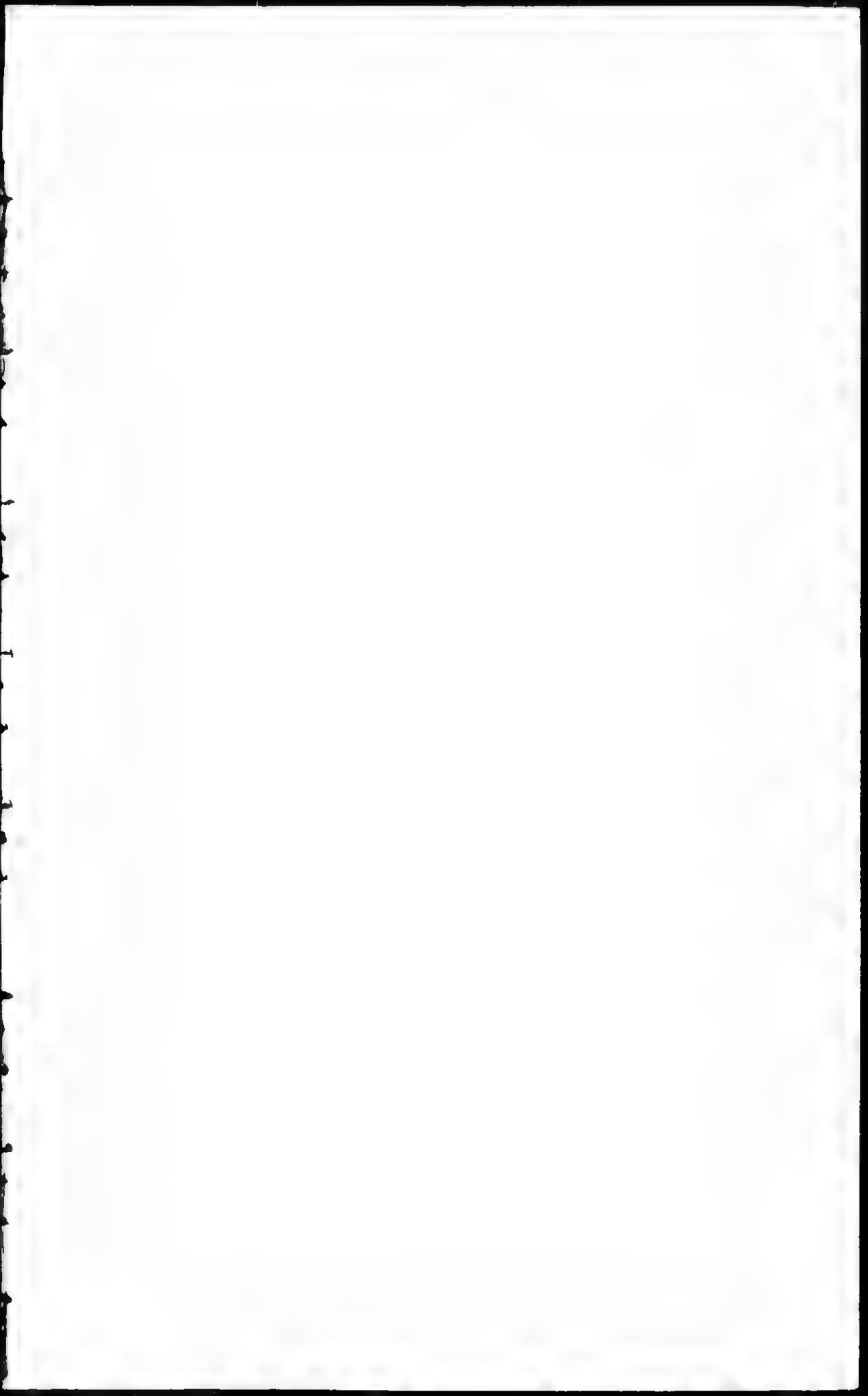
Yes	12
No	3
Withheld	3

Motion carried.

Meeting adjourned at 11:50 A.M.

/s/ J. A. ROBERTSON
J. A. ROBERTSON
Secretary

JAR:ah



JOINT APPENDIX
(Vol. II—Pages 381-750, Incl.)

IN THE
United States Court of Appeals
For the District of Columbia Circuit

No. 19,840

VOLKSWAGENWERK AKTIENGESELLSCHAFT,

Petitioner.

against

FEDERAL MARITIME COMMISSION and UNITED STATES OF AMERICA,

Respondents.

PACIFIC MARITIME ASSOCIATION and MARINE TERMINALS CORPORATION,
Intervenors.

**On Petition to Review and Set Aside Order of the
Federal Maritime Commission**

STEPTOE & JOHNSON
1250 Connecticut Avenue, N.W.
Washington, D. C. 20036

WALTER H. MAYO, III
Federal Maritime Commission
1321 H Street, N.W.
Washington, D. C. 20573

HERZFELD & RUBIN
40 Wall Street
New York, N. Y. 10005

IRWIN A. SEIBEL
United States Department of Justice
Washington 25, D. C.

PILLSBURY, MADISON & SUTRO
225 Bush Street
San Francisco, California 94104

Attorneys for Respondents

Attorneys for Petitioner

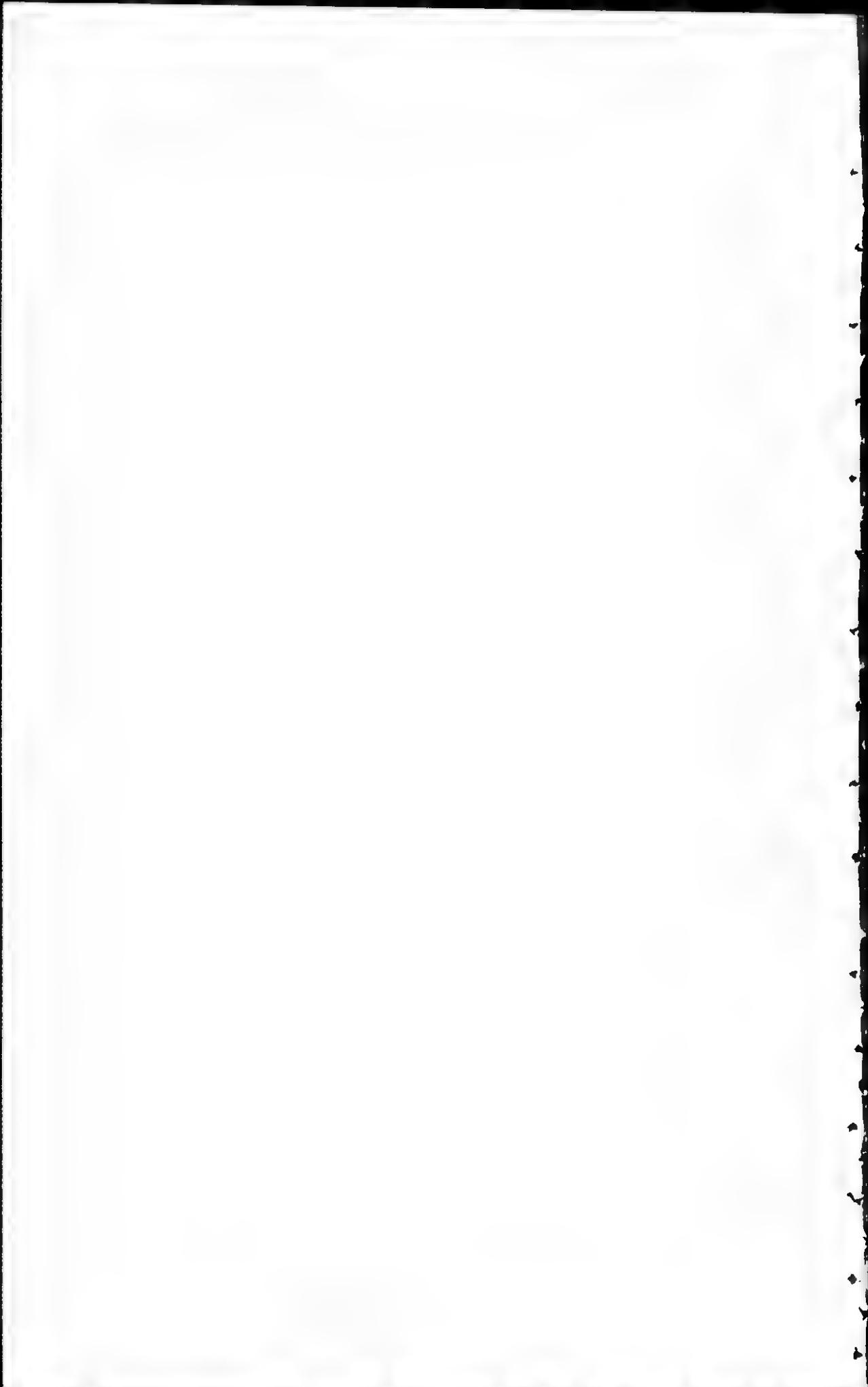
LILLICK, GEARY, WHEAT, ADAMS
& CHARLES
311 California Street
San Francisco, California 94104

MCCUTCHEON, DOYLE, BROWN,
TRAUTMAN & ENERSEN
601 California Street
San Francisco, California 94108

Attorneys for Intervenor Pacific Maritime Association *Attorneys for Intervenor Marine Terminals Corporation*
for the District of Columbia Circuit

FILED MAY 3 1966

Nathan J. Paulson
CLERK



INDEX

	PAGE
Docket Before the Commission	1a
Complaint	12a
Exhibit A—Libel	18a
Exhibit B—Answer to Libel	25a
Exhibit C—Petition to Impel Volkswagenwerk A. G.	28a
Exhibit D—Answer of Complainant	31a
Answer to Complaint	40a
Petition of Pacific Maritime Association to Intervene in Opposition to the Complaint	43a
Exhibit A—Letter, Dated September 28, 1961	50a
Exhibit B—Letter, Dated December 14, 1961 ..	52a
Reply of Complainant to Petition of Pacific Maritime Association to Intervene in Opposition to the Com- plaint	58a
Application for Subpoena Duces Tecum	65a
Ruling on Application for Subpoena Duces Tecum	68a
Excerpts from Testimony	69a
Complainant's Proposed Findings of Fact and Con- clusions of Law	596a
Initial Decision of Benjamin A. Theeman, Examiner	611a
Appendix I—(Same as Exhibits 5-A and 5-B, printed herein at pages 466a to 479a.)	
Appendix II	657a
Complainant's Memorandum of Exceptions to Con- clusions, Findings and Statements in Initial Deci- sion	659a

	PAGE
Exceptions and Brief in Support of Exceptions of Respondents Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles)	665a
Report of Commission	666a
Commissioner John S. Patterson—Dissenting ..	678a
Commissioner Hearn—Dissenting	722a
Order of Commission	729a
Petition for Review	730a
Stipulation as to Issues and Procedures to be Fol- lowed	745a

TESTIMONY

COMPLAINANT'S WITNESSES

Kenneth Frederick Saysette:

Direct	69a
Cross	83a
Redirect	84a
Recross	87a

Peter N. Teige:

Direct	87a
Cross	117a
Redirect	129a
Recross	134a

Fred R. Smith:

Direct	134a
Cross	136a

Ellet G. Horsman:

Direct	137a
Cross	154a
Redirect	162a

	PAGE
Peter Curtis:	
Direct	163a
Cross	170a
Frederick F. Noonan:	
Direct	174a
Cross	176a

**WITNESS FOR INTERVENOR, PACIFIC
MARITIME ASSOCIATION**

Paul St. Sure:	
Direct	178a
Cross	227a

RESPONDENT'S WITNESS

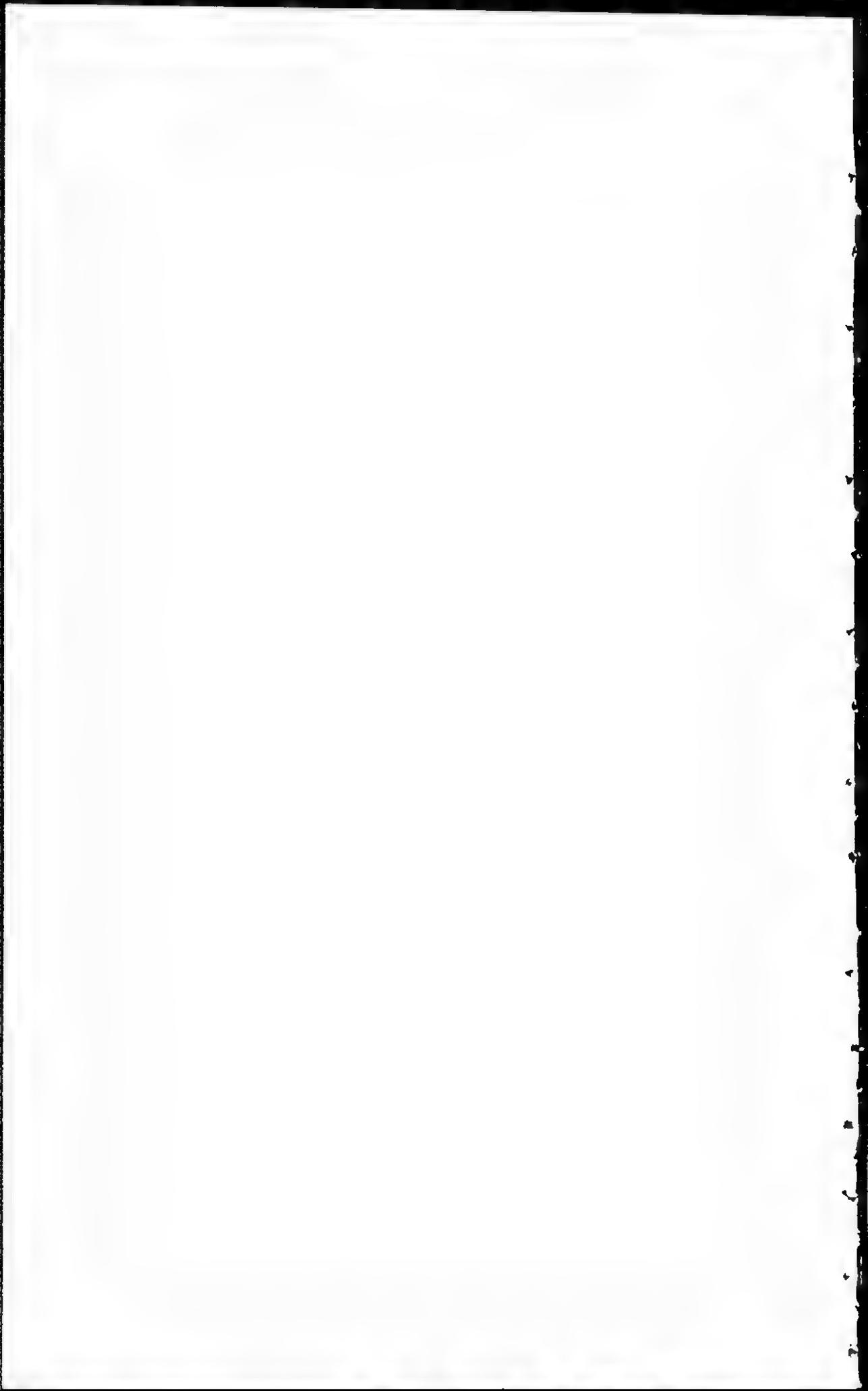
Ellet G. Horsman:	
By Examiner	237a
By Mr. Zimmerman	240a
Cross	241a

EXHIBITS

1-A—Memorandum of Understanding Between Pacific Maritime Association and International Longshoremen's and Warehousemen's Union	243a
1-B—Memorandum of Agreement on Mechanization and Modernization, October 18, 1960 and Memorandum of Understanding attached thereto	262a
1-C—ILWU-PMA Supplemental Agreement on Mechanization and Modernization, Dated November 15, 1961	279a
1-D—Schedule A—Death and Disability Benefits ..	310a

	PAGE
1-E—Schedule B—Vesting Benefits	317a
1-F—Schedule C—Supplemental Wage Benefits ...	323a
1-G—Letter, Dated November 15, 1961	336a
1-H—Letter, Dated November 15, 1961	338a
1-I—Letter, Dated November 15, 1961	340a
1-J—First Amendment of ILWU-PMA Supple- mental Agreement on Mechanization and Moderni- zation	343a
2-D—Minutes of Meeting of December 12, 1962	345a
2-F—Minutes of Meeting of July 3, 1962	354a
2-H—Minutes of Meeting of December 13, 1961	356a
2-I—Minutes of Meeting of November 7, 1961	358a
2-K—Minutes of Meeting of July 11, 1961	365a
2-L—Minutes of Meeting of March 8, 1961	366a
2-N—Minutes of Meeting of January 16, 1961	369a
2-O—Minutes of Meeting of January 10, 1961	372a
2-P—Minutes of Meeting of January 6, 1961	378a
3—By-Laws as Amended of Pacific Maritime Associa- tion	381a
4—Pacific Coast Longshore Agreement	411a
5-A—Report of PMA Committee, Dated January 4, 1961	466a
5-B—Statement of Minority Opinion on ILWU Funding	475a
6—Letter, Dated January 11, 1961	479a
7—Letter, Dated January 17, 1961	481a
9—Letter, Dated March 1, 1961	486a
10—Letter, Dated March 3, 1961	487a

	PAGE
11—Letter, Dated March 24, 1961	492a
12—Letter, Dated March 23, 1961	493a
13—Letter, Dated May 1, 1961	495a
14—Letter, Dated May 1, 1961	496a
20—Minutes of Meeting of August 1, 1961	498a
21—Memorandum of August 15, 1961	502a
22—Memorandum of October 24, 1961	507a
25—Letter, Dated November 29, 1961	510a
26—Letter, Dated November 29, 1961	511a
28—Memorandum of February 8, 1962	515a
31—Memorandum of March 27, 1962	517a
32—Letter, Dated December 10, 1962	519a
35—Letter, Dated January 17, 1961	521a
36—Letter, Dated February 3, 1961	524a
39—Letter, Dated February 9, 1961 with attachment thereto	525a
40—Letter, Dated March 6, 1961 with attachment thereto	530a
41—Letter, Dated March 13, 1961 with attachment thereto	534a
46—Letter, Dated March 3, 1961 with attachment thereto	538a
47—Letter, Dated July 3, 1961, with attachment thereto	554a
48—Errata Sheet, Dated April 25, 1962, with attach- ment thereto	571a
55—Revised Payment Procedures, Dated March 16, 1961	588a
56—Memorandum of December 14, 1961	594a



(Exh. 3, 3)

381a

Exhibit 3

(BY-LAWS AS AMENDED OF PACIFIC MARITIME ASSOCIATION)

INCORPORATED JUNE 3, 1949—APRIL 1960)

[3] BY-LAWS AS AMENDED OF PACIFIC MARITIME ASSOCIATION

ARTICLE I.

The corporate powers, business and Board of property of this corporation shall be Directors vested in and exercised, conducted and controlled by a Board of twenty-one (21) Directors, who need not be members of the corporation.

ARTICLE II.

Officers

The officers of the corporation, none of whom need be a member of the Board of Directors, shall consist of a president, three vice presidents, a secretary, a treasurer, and such other officers as the Board of Directors shall from time to time create. All of the officers of the corporation shall hold office at the pleasure of the Board of Directors.

Exhibit 3

ARTICLE III.

Powers and Duties of Directors

Section 1. The powers and duties of the Board of Directors are:

- (a) To appoint and remove at pleasure all officers, agents and employees of [4] the corporation, other than directors, prescribe such duties for them as may not be inconsistent with law and these by-laws, fix their compensation and require from them security for faithful service;
- (b) To conduct, manage and control the affairs and business of the corporation, and to make such regulation therefor, not inconsistent with law and these by-laws, as they may deem best;
- (c) To approve and admit to membership persons, firms, associations or corporations, qualified therefor under the provisions of the Articles of Incorporation of this corporation and these by-laws;
- (d) To borrow money and incur indebtedness for the purpose of the corporation, and to cause to be executed and delivered therefor in the name of the corporation promissory notes and other evidence of debt;
- (e) To levy and assess and collect, or provide for the collection of, dues or assessments in accordance with the provisions of these by-laws; but the Board of Directors shall not have the power to levy, assess or collect dues or assessments in excess of a maximum rate to [5] be fixed, at a regular or special meeting, by the vote of members holding a majority of the voting power of the entire membership;
- (f) To prepare, approve and file with the secretary a roster of the membership, classified in accordance with the provisions of Article IV, Section 3 and to prepare, approve

(Exh. 3, 5-6)

383a

Exhibit 3

and file with the secretary a roster of the membership of each port area defined herein in accordance with the provisions of Article VIII, Section 2, hereof;

(g) To transact all of the affairs of the corporation.

ARTICLE IV.

Qualifications of Members

Section 1. Any firm, person, association or corporation engaged in the business of carrying passengers or cargo by water to or from any port on the Pacific Coast of the United States (except Alaskan ports), or any agent of any such firm, person, association or corporation, and any firm, person, association or corporation employing longshoremen or other shoreside employees in operations at docks or marine terminals at any such port and any association or corporation composed of employers of such longshoremen or other shoreside employees [6] shall be eligible for membership in this corporation.

Membership Groups

Section 2. For the purposes of representation on the Board of Directors, convenience in group consideration of corporate problems and activities, and determinations of voting power, the members shall be organized into eight (8) groups as follows:

Passenger Line Group

(a) The passenger line group, consisting of members operating American flag passenger vessels as defined in the navigation laws of the United States to or from Pacific Coast ports, and member agents of non-members engaged in such operation.

Exhibit 3

Intercoastal Line Group

(b) The intercoastal line group, consisting of members engaged in the operation of vessels carrying freight between ports on the Pacific Coast and ports on the Atlantic or Gulf Coasts of the United States, and member agents of non-members engaged in such operation.

Coastwise Group

(c) The coastwise group, consisting of members engaged in the operation of vessels carrying freight between ports of the Pacific Coast north of Mexico (except on voyages between ports of Puget Sound and ports in Alaska), and member agents of non-members engaged in such operation.

[7] *Alaska Area Group*

(d) The Alaska area group, consisting of members engaged in the operation of vessels on voyages between ports of Puget Sound and ports in Alaska, and member agents of non-members engaged in such operation.

Offshore Group

(e) The offshore group, consisting of members engaged in the operation of American flag vessels carrying freight between ports on the Pacific Coast of the United States and foreign ports or Hawaii or ports in the Island Territories, or possessions of the United States, and member agents of non-members engaged in such operation.

Foreign Line Group

(f) The foreign line group, consisting of members engaged in the operation of foreign flag vessels to or from any port on the Pacific Coast of the United States except

(Exh. 3, 7-8)

385a

Exhibit 3

Alaskan ports, and member agents of non-members engaged in such operation.

Stevedore Group

(g) The stevedore group, consisting of members engaged in the business of loading or discharging dry cargo vessels at any port on the Pacific Coast of the United States, except Alaskan ports.

Terminal Group

(h) The terminal group, consisting of members engaged in the operation of any marine terminal at a port on the [8] Pacific Coast of the United States, except Alaskan ports.

Membership Classification and Roster

Section 3. Members shall be classified in any one or more of the groups referred to in this Article in accordance with their respective operations and activities, each member being eligible to be classified in any one or more of such groups for which its operations or activities may qualify it, and the Board of Directors shall cause to be prepared, approved, and filed with the secretary, a roster of the membership classified in accordance with the provisions of this Article, and shall cause such roster to be amended from time to time to reflect the membership of each of said groups.

ARTICLE V.

Director Representation

Section 1. The Directors shall be twenty-one (21) in number; they shall be selected as follows:

Two by the passenger line group, three by the inter-coastal line group, one by the coastwise group, one by the Alaska area group, four by the offshore group, two by the

Exhibit 3

foreign line group, two by the stevedore group, two by the terminal group; and one by each of the area memberships.

Alternate Directors

Each Director shall by written designation filed with the Secretary of this [9] Corporation name his alternate, which designation may be revoked or changed at any time by written notice filed with the secretary at any meeting of the Board of Directors; in the absence of a Director, his alternate shall constitute a Director in his place and stead and shall exercise all of the duties, powers and functions of such absent Director at such meeting.

Selection of Membership Group Chairman

Section 2. Each of the membership groups (not limited to those specified in Article IV, Section 2) shall appoint its own chairman, and, in the case of an area membership, the said chairman shall also be chairman of the executive committee for such area, and establish its own rules of procedure for the selection of Directors and consideration of such matters as may come before the group for consideration. Notwithstanding the provisions of Article VI, in the selection of Directors, each member of the group shall be entitled to one vote and to one vote only.

Selection of Directors

Section 3. Directors shall be selected annually, on or before the first day of March of each year. Meetings shall be held of the memberships of the passenger line group, the intercoastal line group, the coastwise group, the Alaska group, the offshore group, the foreign [10] line group, the stevedore group and the terminal group and of the memberships of the port areas of Southern California, of Northern California, of Oregon and Columbia River and of Washington at which Directors shall be selected and each such membership shall cause the Directors selected at such meeting to be certified in writing to the Board of

Exhibit 3

Directors and the membership at or before the annual meeting of members. The directors so selected shall take office at the conclusion of the annual meeting of members and shall hold office until the next succeeding annual meeting of members or until election of their successors.

Vacancies in the Board of Directors

Section 4. When any vacancy occurs in the office of Director, such vacancy shall be filled by the group which selected the Director.

Section 5. A vacancy in the Board of Directors shall be deemed to have occurred whenever a Director resigns, which he may do either by presenting his written or oral resignation to the Board or by mailing or telegraphing his resignation to the corporation, or whenever a Director dies, or by judgment of a competent court is declared incompetent or insane, or whenever any vacancy is created in accordance with [11] any law of the State of California. Unless otherwise provided herein, any such resignation shall become effective when presented, mailed or telegraphed as aforesaid.

ARTICLE VI.

Voting Power

Section 1. Each member of this corporation shall have one vote. In addition each member shall have one vote for each full one hundred thousand (100,000) tons (or such other unit of measurement as the Board of Directors may designate for cargo of which tonnage is not an appropriate measure) of cargo loaded and/or discharged by or for such member or its principal during the preceding calendar year at Pacific Coast ports of the United States other than Alaska ports to or from vessels owned, operated or managed by such member; provided, however, that in determining the tonnage of cargo handled by any member in the stevedore group or the terminal group there shall be excluded

Exhibit 3

the cargo handled by it for any member in any other member group; and each member of the passenger line group, coastwise group, intercoastal line group, Alaska group and offshore group shall have in addition a number of votes equal to the average number of seafaring employees employed under [12] collective bargaining contracts executed on behalf of such member by the corporation (or in respect to whom the corporation has been authorized by such member to conduct collective bargaining in its behalf) on vessels operated by such member during the preceding calendar quarter year divided by one hundred.

Certification of Tonnage and Personnel

Section 2. The Board of Directors shall have the power by resolution to establish general rules for the purpose of ascertaining and determining for voting purposes, the tonnage (or other measurement designated by the Board of Directors) of cargo handled and average employment of seafaring personnel. Each member shall report to the secretary of the corporation on or before the 20th day of each month the tonnage (or other designated measurement of cargo) loaded or discharged by or for such member at Pacific Coast ports of the United States other than Alaska ports during the preceding calendar month (agent members reporting separately the tonnage or other designated measurement of cargo so loaded or discharged on behalf of the principals on whose behalf they are acting as members), and the secretary shall certify to the Board of Directors in advance of the annual meeting the tonnage or other [13] designated measurement of cargo so loaded and/or discharged by or for each voting member during the preceding calendar year and the tonnage or other designated measurement of cargo so loaded and/or discharged for principals on whose behalf agent members are acting during such preceding calendar year; and each member of the passenger line group, coastwise group, Alaska group, intercoastal line

(Exh. 13-14)

389a

Exhibit 3

group and offshore group shall report to the secretary of the corporation on or before the 20th day of each month the number of seafaring employees employed by it under contracts executed on its behalf by the corporation (or in respect to whom the corporation has been authorized by such member to engage in collective bargaining on its behalf) on vessels operated by such member during the preceding calendar month, and promptly after the expiration of each quarter of each calendar year the secretary shall report to the Board of Directors the average number of such seafaring employees so employed on vessels of each such member during the preceding quarter. The Board of Directors shall, based upon such reports of the secretary and any other source which the Board of Directors shall deem proper, determine [14] from time to time as may be necessary for voting purposes, the tonnage or other designated measurement of cargo so loaded and/or discharged by each member and the average number of such seafaring personnel so employed, which determinations shall be final and conclusive upon all members.

ARTICLE VII.

Regular Directors' Meetings

Section 1. Meetings of the Board of Directors shall be held either at the office of the corporation or at any other place which may be designated by resolution of the Board of Directors. Regular meetings of the Board of Directors shall be held on the second Wednesday of each March, June, September and December at 10:00 o'clock A.M., without other or further notice than this by-law; provided, however, that should said meeting day at any time fall upon a legal holiday such meeting shall be held on the next day thereafter which is not a legal holiday at the same hour and place. A majority of the Board shall constitute a quorum for the transaction of business.

Exhibit 3

Special Directors' Meetings

Section 2. Special meetings of the Board of Directors may be called at any time by order of the President or any Vice-President of the corporation or [15] four (4) Directors. Notice of a special meeting of the Board of Directors shall state the nature of the business to be transacted and be given each Director by mailing notice thereof, at least four (4) days prior to the date of meeting, addressed to each Director at his place of business or residence as the same appears on the books of the corporation, or, in case no business or residence address of such Director appears on the books of the corporation, then directed to any address appearing on such books for such Director.

Emergency Directors' Meetings

In the event that the President or any Vice-President of the corporation, or any four (4) Directors thereof, shall determine that an emergency exists requiring an immediate meeting of the said Board of Directors, notice thereof may be given not less than twenty-four (24) hours prior to the hour set for said meeting by notice transmitted to the place of business of each Director either by telephone or telegraph. No notice other or further than that specified in this Section shall be required. Anything which may be done at a regular meeting of the Board of Directors may be done at a special or an adjourned meeting of the Board.

Section 3. At any meeting of the [16] Board of Directors every act or decision done or made by a majority of the Directors present shall be regarded as the act of the Board of Directors. In the absence of a quorum a majority of the Directors present may adjourn from time to time until the time fixed for the following regular meeting of the Board.

(Exh. 3, 16-17)

391a

Exhibit 3

ARTICLE VIII.

Executive Committees

Section 1. There shall be created one Coast Executive Committee and four (4) Area Executive Committees to exercise such power and authority of the Board of Directors in the management of the business and affairs of the corporation as the Board of Directors shall determine, except the power to levy dues or assessments, all subject to the authority and control of the Board of Directors. Each Executive Committee shall have power to establish rules governing its own proceedings, including the establishment of its place of meeting, any regular time of meeting and other rules concerning its procedure. Minutes shall be kept of all proceedings of any Executive Committee to be incorporated in and become a part of the minutes of the Board of Directors.

Coast

Section 2. The Coast Executive Committee shall consist of seven directors [17] to be appointed by the Board of Directors from its members and in addition to ex-officio members as hereinafter provided. Each member of the Coast Executive Committee shall designate in writing an alternate to act as a member of the Coast Executive Committee in the absence of the member appointing him. Upon the approval by the Board of Directors of any alternate so designated he shall be entitled to act as a member of the Coast Executive Committee in the absence of the member so designating him. Such alternate may be changed at any time by written designation of the member appointing such alternate with the approval of the Board of Directors.

Exhibit 3

Area

Each Area Executive Committee shall consist of not less than seven (7) nor more than ten (10) members to be selected by the membership in the Port Area. There shall be an Area Executive Committee for the Port Area of Southern California, one for the Port Area of Northern California, one for the Port Area of Oregon and the Columbia River, and one for the Port Area of Washington.

The membership of the Port Area of Southern California shall consist of those members doing business either [18] directly or through agents at ports in California, south of and including the Port of Hueneme, which ports are designated the Southern California Port Area.

The membership of the Northern California Area shall consist of members doing business either directly or through agents in ports of California north of Port Hueneme, which ports are designated as the Northern California Area.

The membership of the Oregon and Columbia River Port Area shall consist of members doing business either directly or through agents in ports in the State of Oregon and on the Columbia River, which ports are designated as the Oregon and Columbia River Area.

The membership of the Washington Area shall consist of members doing business either directly or through agents in ports in the State of Washington, excluding the Columbia River, which ports are designated as the Washington Area.

Selection

The selection of such Area Executive Committees shall be at meetings of the respective port area memberships called and held at such times and places and on such notice as the Board of Directors [19] shall prescribe, at which meetings each port area member shall be entitled to one vote. Each port area membership shall have power to estab-

(Exh. 3, 19-20)

393a

Exhibit 3

lish rules governing its own proceedings not inconsistent with the provisions of these By-Laws or of any resolution of the Board of Directors relating thereto.

Roster

The Board of Directors shall cause to be prepared, approved and filed with the secretary a roster of the membership of each port area defined herein and shall cause such roster to be amended from time to time to reflect the membership of each of said groups.

Section 3. The Chairman of each Area Executive Committee shall be ex-officio, a member of the Coast Executive Committee.

ARTICLE IX.

President

The President shall preside at all meetings of the Board of Directors and of the members and of all committees except Area Executive Committee; he shall sign as President of the Corporation all deeds, mortgages, leases, promissory notes and contracts, and other instruments that may require such signature, unless the Board of Directors [20] shall otherwise direct; and he shall perform such other duties as the Board of Directors may determine.

Vice Presidents

Each Vice-President shall exercise such authority and perform such duties as the Board of Directors shall, from time to time, by resolution prescribe.

Secretary

The Secretary shall keep a record of the proceedings of the Board of Directors and of meetings of the members, and such other records and minutes as the Board of Directors

Exhibit 3

shall require; he shall keep the records of the corporation, sign in conjunction with the President or any Vice-President, checks, drafts, notes and other instruments, unless the Board of Directors shall otherwise direct, and generally perform such duties as pertain to his office, and as may be required by the Board of Directors or by the President.

Treasurer

The Treasurer shall receive any monies belonging to or paid in to the corporation and deposit the same as the Board of Directors shall require; he shall supervise the accounts and books of the corporation and perform such other duties as the Board of Directors shall prescribe.

The offices of Secretary and Treasurer may, at the discretion of the Board of Directors be held by one person.

[21] ARTICLE X.

Membership Meetings
Annual Meeting

Section 1. There shall be a regular annual meeting of the members of the corporation on the second Wednesday in March of each year, at 2:00 o'clock P.M., at the office of the corporation; provided, however, that should said meeting day fall upon a legal holiday, said meeting of the members shall be held on the next day thereafter which is not a legal holiday, at the same hour and place. Notice of the annual meeting of members shall be given by mailing notice thereof stating the nature of the business to be transacted at least five (5) days prior to the date of meeting, addressed to each of the members of the corporation at his or its place of business or residence as the same appears on the books

Exhibit 3

of the corporation, or, in case no business or residence address of a member appears on the books of the corporation, then directed to any address appearing on the books for such member. No other or further notice shall be required.

Special Meetings

Section 2. Special meetings may be called and held at any time by order of the President or four (4) members of the Board of Directors, or ten (10) members of the corporation, by notice, stating the nature of the business to be [22] transacted at the meeting, given in either of the two following manners:

1. By a four days' notice in writing given to all members in the manner provided in Section 1 of this Article; or
2. By notice transmitted to the place of business of each member by telephone or telegraph at least twenty-four (24) hours prior to the hour fixed for said meeting. The latter form of notice shall be given only if the President or four (4) members of the Board of Directors, or ten (10) members of the corporation, shall determine that an emergency exists requiring an immediate meeting of the members.

Section 3. It shall be the duty of the Secretary, upon demand of the President or four (4) members of the Board of Directors or ten (10) members of the corporation, to prepare and send notice of any special meeting to each member of the corporation in accordance with Section 2 of this Article.

Quorum

Section 4. At all meetings of the members, persons representing a majority of the voting power of the membership, either in person or by proxy in writing, or by telegraph, shall constitute a quorum.

Exhibit 3

Membership Groups Meetings

[23] Section 5. Meetings of one or more of the membership groups (not limited to those specified in Article IV, Section 2) may be called and held at any time in like manner and upon like notice as special meetings of the entire membership. Members holding a majority of the voting power of the group or groups for which any such meeting is called, either in person or by proxy in writing or by telegram, shall constitute a quorum.

ARTICLE XI.

Powers of Corporation

Section 1. Subject to the provisions of Section 8 hereof, this corporation shall have power to establish policies for its members and the corporation in all matters relating to labor contracts and labor controversies and, subject to the provisions of Sections 2 and 3 of this Article, shall have power to represent and act on behalf of its members in any negotiations carried on by the corporation on behalf of its members with unions of longshoremen or other employments ashore and with unions of seamen, and any contracts, commitments or undertakings made by this corporation on behalf of its members with any union shall bind the members of this corporation; provided, however, that this corporation shall be without [24] power to bind any of its members other than passenger lines, coastwise lines, intercoastal lines, Alaska lines, and offshore lines by any contract with or commitment to any union of seamen or seafaring personnel; provided further, that this corporation shall be without power to bargain or contract with or to make any undertaking to any union of seamen or seafaring personnel on behalf of a member which has not authorized the corporation to act on its behalf in bargaining with such union; provided further, that this corporation shall be without power

Exhibit 3

to bargain or contract with any union of seamen or seafaring personnel with respect to wages, hours or working conditions of the crews of tankships, or crews of vessels of the foreign line group.

Labor Practice

Section 2. Notwithstanding any other provision of these By-Laws, this corporation shall be without power to contract with or make any commitment to any union, and no contract, commitment or undertaking which would impose any personal obligation or liability on the members of this corporation shall be made or entered into by this corporation, until and unless such contract, commitment or undertaking has been approved, at a regular or special meeting of the members, by vote of members [25] holding a majority of the voting power of the entire membership and, if such contract, commitment or undertaking relates to seafaring personnel, has been approved by the vote of members holding a majority of the combined voting power of members in the passenger line, intercoastal line, coastwise, Alaska area, and offshore groups, which shall have authorized the corporation to act in their behalf in respect thereto; or unless such contract, commitment or undertaking shall have been made or entered into by this corporation pursuant to a delegation of authority conferred by similar votes.

Liability of Members

Section 3. A member who has not authorized or accepted in writing such contract, commitment or undertaking and who has not voted in favor of the approval thereof or the delegation of authority with respect to the particular terms thereof shall not be bound by such contract, commitment or undertaking, if such member resigns within seven (7) days after the date of the vote thereon, whether taken in advance

Exhibit 3

of or during the negotiations, or subsequent to the drafting of the contract, agreement or commitment in final form and submission to the membership for approval.

[26] Section 4. No member becoming bound in respect of any contract, commitment or any other undertaking made by this corporation shall be under any liability with respect to any act taken or omitted hereunder by any other member.

Violation of Corporation Policy

Section 5. If any member shall violate, directly or indirectly, any rule or policy established by this corporation, or procure, encourage or assist in any such violation by any other person, whether a member of this corporation or not, or shall, directly or indirectly, violate any provision of any contract or agreement made by the corporation on its behalf with any longshoremen or other employees ashore or unions thereof, or with any seamen or unions thereof, or procure or encourage or assist in any such violation by any other person, whether a member of this corporation or not, or shall violate any other provision of these By-Laws, then, in any such event, the Board of Directors shall have the power, in its discretion, to suspend any such member for such period of time as the Board of Directors shall prescribe or to expel such member from membership in this corporation; and in addition, in any such event, that is a violation of a "rule of labor policy" adopted with such designation [27] by the Board of Directors of the corporation, such a member shall be liable to the other members who do not participate in such violation for their damages resulting from such violation. The members and the corporation recognize and acknowledge that compliance with the policies established by the corporation for its members and the corporation in matters relating to labor contracts and labor controversies and compliance with contracts commitments or undertakings made by this cor-

Exhibit 3

poration on behalf of its members with any labor union or organization are essential to the achievement of the purposes of the corporation in carrying on labor relations and in order to prevent injuries to the members that may be of long duration and great severity and may develop at great distances from the violation and after considerable delay and that it would be extremely difficult, if not impracticable or impossible, to fix the actual expense and damage to each of the members of the corporation that would result from any violation of a member. Therefore, the amount of damage resulting from any violation of such a "rule of labor policy" shall be payable to the corporation for the account of such members and by [28] way of liquidated damages and not as a penalty, as follows:

(a) Liquidated damages in the sum of \$5,000 for entering into or continuing in effect any contract, commitment or undertaking with any union or labor organization or group of employees or individual employee that is contrary to any such "rule of labor policy," except to the extent that such contract, commitment or undertaking is outside of the field within which such member shall have authorized this corporation to act in its behalf as recognized under Section 8 hereof.

(b) The sum of \$100 for each day of employment of each employee who is employed or paid in accordance with wages, hours or other terms or conditions of employment that is contrary to any such "rule of labor policy," except to the extent that such employment is outside of the field within which such member shall have authorized this corporation to act in its behalf as recognized under Section 8 hereof.

(c) The sum of \$5,000 for any other violation of any such "rule of labor policy," except to the extent

Exhibit 3

[29] such "rule of labor policy" is not binding on such member as recognized in Section 8 hereof.

Upon a claim's being made to the Board of Directors of the corporation that any member has committed a violation within the meaning of (a), (b), or (c) above, the Board of Directors shall cause investigation to be made with respect to the facts and shall determine whether or not a violation has occurred and the amount of liquidated damages to be assessed in accordance with the above provisions. A member who is claimed to have been in violation shall be given written notice of the alleged violation and of the investigation to be had with respect thereto and shall be given opportunity to appear and be heard by the Board of Directors and any agent of the Board of Directors carrying on an investigation, such appearance to be through any regular officer of the company who participates in meetings of the Association. The corporation is authorized to act on behalf of members in collecting the liquidated damages provided for herein and may use whatever means to this end it deems proper, including civil action if any member fails to pay liquidated damages as determined by the Board [30] of Directors within ten days after receipt of written demand therefor from the corporation. Should an action in court be instituted, the member in violation shall pay all costs of such litigation, including court costs, reasonable attorney's fees and all other expenses of the corporation and its counsel in connection with the collection of such liquidated damages.

Any member who commits an act that is a violation as defined in (a), (b), or (c) above shall be liable for liquidated damages as specified herein even though said member may have resigned from the corporation or have been suspended or expelled from the corporation prior to the time that the fact of violation and the amount of liquidated damages has

(Exh. 3, 30-31)

401a

Exhibit 3

been determined in accordance with the procedures set forth herein.

Violation of Contracts

Section 6. If any union, its members or officials, shall violate any labor contract or award relating to wages, hours or working conditions to which contract or award this corporation is a party, or in the negotiation or administration of which contract or award this corporation has acted for a member or members, whether such violation shall be by strike, stoppage of work or in any other manner, any member affected [31] thereby shall notify the corporation. All appropriate means for peaceful settlement of any such matter shall be pursued with the appropriate officers of the union or unions involved in an endeavor to secure compliance with the terms of such agreement or award. If compliance is not secured, a meeting of the members of this corporation shall forthwith be called and all members of this corporation shall take whatever action shall be determined by a vote of the members holding at least a majority of the voting power of the membership; provided that there shall be no suspension or termination of any such contract or agreement for breach thereof without consent of members representing at least two-thirds of the voting power of the class or classes of members bound by such contract or agreement; provided further that written notice of any such vote or consent shall be immediately given by registered mail to all members and no such vote or consent shall bind any member who did not join therein and who resigns within seven (7) days after the date of mailing such notice.

Financial Assistance to Members

Section 7. If any labor union or association of working men or any members of such union or association shall vio-

Exhibit 3

late any agreement with this corporation, [32] or any agreement in the negotiation or administration of which this corporation has acted for a member or members, the Board of Directors shall, upon application, cause investigation to be made, and if the Board of Directors shall find that such union or association is at fault, and fails or refuses to make reparation or otherwise remedy such violation or refusal to the satisfaction of the Board of Directors, and if this corporation after investigation shall desire to resist the demands of such union or member thereof, this corporation shall render to such member or members of this corporation the fullest moral support, and shall pay such expenses incurred by such member in any strike, lockout or other labor trouble caused by such action of the union, association or member or members thereof, as shall be approved and limited by the Board of Directors of this corporation in advance.

If any labor union or association of working men or any members of such union or association shall take economic action directed against this corporation or its members, or any one or more of its members, in connection with any policy established under Section 1 of this Article for this corporation and its members in any matter relating to [33] labor contracts and labor controversies, the Board of Directors upon application shall cause an investigation to be made and, if the Board of Directors shall find that such union or association is at fault and fails or refuses to cease such economic action or to make reparation or otherwise remedy such economic action to the satisfaction of the Board of Directors and if this corporation after investigation shall desire to resist the demands of such union or association or member or members thereof, this corporation shall render to such member or members of this corporation the fullest moral support and shall pay such expenses incurred by such member in any strike, lock-

Exhibit 3

out, or other labor trouble caused by such action of the union, association, or member or members thereof, as shall be approved and limited by the Board of Directors of this corporation in advance.

If any member or members of this corporation shall have, by reason of their compliance with a labor policy established by this corporation, incurred expenses in the defense of such labor policy, or have been subjected to loss due to liability under law, and if this corporation after investigation and in accordance with policies to be laid [34] down by the Board of Directors determines that such loss and expenses should be assumed by this corporation because such member or members have incurred such losses or expenses as the result of compliance with a labor policy of the Association and have thereafter complied with the procedures laid down by the Board of Directors with respect to such loss or liability, this corporation shall render to such member or members of this corporation the fullest moral support and shall pay such expenses and reimburse such losses incurred by such member or members as shall be approved and limited by the Board of Directors of this corporation.

No personal obligation or liability on the part of any member of the corporation shall accrue under this Article XI or by virtue of any action taken by the corporation hereunder, provided, that the foregoing shall not be deemed to affect the power of the Board of Directors to levy assessments in the manner provided in Article XIII of these By-Laws for the purpose of rendering assistance to members as permitted by Article XI.

Members Not Bound

Section 8. Notwithstanding any other provision of these By-Laws, no foreign line member and no other member which shall not have authorized this [35] corporation to act

Exhibit 3

in its behalf in bargaining with a union, or unions, of seafaring personnel shall be bound by any policy established by this corporation in connection with labor contracts or labor controversies affecting or respecting seamen or seagoing personnel.

ARTICLE XII.

Initiation Fee

Each member shall pay an initiation fee which shall be not less than Two Hundred Fifty Dollars (\$250.00) and shall be such amount as may be required to insure a contribution to the assets of the corporation which will bear to the corporation's current assets a proportion substantially equivalent to the voting power of the new member; and the Board shall take into consideration in fixing such initiation fee any contribution theretofore made indirectly to the assets of the corporation.

ARTICLE XIII.

Dues and Assessments

Section 1. The members shall pay such dues and assessments as shall be fixed or levied by the Board of Directors in accordance with the provisions of this Article. Such dues and assessments shall consist of the following:

Cargo Dues

(a) Assessments to be fixed from time to time by the Board of Directors [36] measured by (1) each ton of cargo (or such other unit of measurement as the Board of Directors may determine to be equivalent in instances where the Board shall determine that the ton is not an appropriate unit of measurement) loaded or discharged at Pacific Coast ports of the United States other than Alaska ports by or for members or for any other firm, person, association or corporation not a member of this corporation; and (2) the man-

Exhibit 3

hours of work performed by persons employed under the terms of collective bargaining agreements executed by this corporation, or its predecessors, or dispatched from hiring halls or other such facilities maintained and operated by this corporation in whole or in part, or by a union party to any such collective bargaining agreement. In fixing and levying the above assessments, the Board of Directors in its discretion may use either or a combination of the above bases. All sums delivered by the corporation from such assessments shall be known as "cargo dues."

Shipping Dues

(b) Assessments to be fixed by the Board of Directors from time to time measured by the average number of seamen or seafaring employees employed by any member company under contracts executed on its behalf by this [37] corporation, or in respect to which this corporation is authorized to bargain on behalf of such member during such period, as the Board of Directors shall fix, and all sums derived by the corporation from such assessment shall be known as "shipping dues," and

Payroll Dues

(c) Assessments to be fixed from time to time measured by the payroll costs of member companies in the respective port areas defined in Article VIII herein for the employment of dock or terminal labor under contracts to which this corporation is a party, such rate in each port area to be such as the Area Executive Committee with the approval of the Board of Directors deems appropriate and necessary to defray the cost of services of a local area nature carried on at the expense of this corporation, and all sums derived from such assessments shall be known as "payroll dues."

Exhibit 3

Directors' Determination of Dues

Section 2. In fixing and levying that portion of the cargo dues assessed according to tonnage handled, the Board of Directors may establish different rates per ton, or other measurement unit for different classes of cargo and different rates per ton or other measurement unit applicable to different loading or discharging handling conditions, and the Board of Directors shall also [38] fix rules for calculation of the tonnage or other measurement units loaded, discharged, and/or handled, by or for members of the corporation. In fixing and levying that portion of said cargo dues assessed according to man hours of employment, the Board of Directors shall establish rules and regulations necessary for the calculation thereof. In fixing and levying shipping dues, the Board of Directors shall establish rules for the calculation of the average number of seamen or seafaring employees employed by member companies. In fixing and assessing payroll dues, the Board of Directors shall establish rules to be uniformly applied for the purpose of determining payroll costs and the manner of calculation of the dues measured thereby. The determinations of the Board of Directors in respect to all of the matters specified in this Section shall be final and conclusive.

Membership Approval

Section 3. The foregoing provisions of this Article XIII and the rules fixed thereby governing dues and assessments may be changed and other and different rules governing dues and assessments may be established by resolution of the Board but only after approval thereof by vote of members holding a majority of the voting power of the entire membership [39] at a regular or special meeting of the members, in the notice of which the substance of the resolu-

(Exh. 3, 39-40)

407a

Exhibit 3

tion of the Board of Directors to be approved shall have been stated.

Minimum Dues and Assessments

Section 4. Three Hundred Dollars (\$300.00) per year is hereby fixed as the minimum dues and assessments of each member for each fiscal year ending June 30. On June 30 of each year each member which shall have paid as dues and assessments for the preceding full fiscal year of membership less than Three Hundred Dollars (\$300.00) shall pay theretofore the difference between Three Hundred Dollars (\$300.00) and the total dues and assessments paid by such member for such year.

Notice

Section 5. Notice of any action taken by the Board of Directors with respect to dues or assessments shall be sent to the members promptly by registered mail and shall not become effective until seven (7) days after such mailing. No member who resigns from the corporation prior to the effective date of such action shall be bound thereby.

Separate Accounts

Section 6. The corporation shall maintain on its books separate accounts as follows:

Cargo Dues Account

(a) An account consisting of all sums derived by the corporation from cargo [40] dues, and which account shall be used only for the expenses of the corporation in connection with or relating to the negotiation, execution, administration and performance of contracts affecting shore labor and other matters affecting the interests of members in connection with shore labor, and a fair and reasonable percentage of overhead and general administrative and miscel-

Exhibit 3

laneous expense incurred for the benefit of the membership of the corporation as a whole.

Shipping Dues Account

(b) An account consisting of all sums derived by the corporation from shipping dues, which account shall be used only for the expenses of the corporation in connection with or relating to negotiation, execution, administration and performance of contracts affecting seafaring labor, and other matters affecting the interest of members in connection with seafaring labor, and a fair and reasonable percentage of overhead and general administration expense incurred for the benefit of the membership of the corporation as a whole, provided that in no event will shipping dues be assessed against or collected from the foreign line members.

Port Area Payroll Dues Accounts

[41] (c) A separate account for each Port Area, consisting in each case of all sums derived by the corporation from payroll dues assessed in such Area, each of which accounts shall be used only for the expenses of the corporation in connection with the furnishing of services to members of a strictly local character (other than services in negotiating and administering collective bargaining contracts), such as maintenance of a central pay office, collective tax reporting, and other services for the benefit of the direct employers of shore labor within the Port Area, and a fair and reasonable percentage of administrative expense attributable to the services described in this subsection.

ARTICLE XIV.

Admission To Membership

No firm, person, association or corporation shall become a member of this corporation, unless and until it shall have

(Exh. 3, 41-43)

409a

Exhibit 3

been approved for such membership by a vote of not less than a majority of the Board of Directors and unless the applicants shall be qualified for membership in accordance with the provisions of the Articles of Incorporation of this corporation and of these By-Laws.

ARTICLE XV.

Resignation

Any member may resign by submitting [42] its written resignation at any meeting of the Board of Directors or of the members, or by mailing or telegraphing its resignation to the corporation; and thereupon such resignation, without the necessity of any acceptance, shall become effective forthwith unless otherwise specified therein, provided, however, that no such resignation shall become effective until full payment of all arrears for dues and assessments to which such member has become liable. In the event that any member shall resign from membership in this corporation or shall be expelled from membership therein, all interest of such member in this corporation or in any of its property shall forthwith cease and terminate, provided, however, that no such resignation or expulsion and no suspension from membership in this corporation shall terminate or affect any liability of such member which may have theretofore accrued nor affect any obligation of such member under or pursuant to the terms of any labor contract or agreement theretofore made or entered into on its behalf by this corporation. The Board of Directors shall likewise have power to impose any penalties or other conditions to the re-admission of any such former member to membership in this corporation, or [43] to the termination of any suspension of any member.

Exhibit 3

ARTICLE XVI.

Final Distribution of Assets

Upon the dissolution of this corporation, after paying or adequately providing for the debts and obligations of the corporation, the remaining assets, if any, shall be divided among the members, as follows: All sums remaining in the funds derived respectively from cargo dues, shipping dues and area payroll assessments shall be distributed to each member contributing thereto in the proportion which its contributions to the respective funds during the preceding calendar year shall bear to the total amounts paid by all members contributing thereto in such year, and all other assets shall be distributed to each member in proportion to the total amount of dues and assessments assessed upon and paid by such member to the corporation during the preceding calendar year shall bear to the total amount of such dues and assessments assessed upon and paid by all members during the same year.

ARTICLE XVII.

Amendments

These By-Laws may be amended at any regular or special meeting of the [44] members in the notice of which the substance of the proposed amendment has been stated, by the vote of members holding two-thirds of the voting power of the entire membership.

(Exh. 4, 1)

411a

Exhibit 4

PACIFIC COAST LONGSHORE AGREEMENT

June 16, 1961-July 1, 1966

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION

And

PACIFIC MARITIME ASSOCIATION

* * *

[1] PACIFIC COAST LONGSHORE AGREEMENT

THIS AGREEMENT, dated June 16, 1961 and amended June 22, 1962, is by and between Pacific Maritime Association (hereinafter called "the Association"), on behalf of its members (hereinafter designated as "the Employers" or the "individual employer"), and the International Longshoremen's and Warehousemen's Union (hereinafter designated as "the Union"), on behalf of itself and each and all of its longshore locals in California, Oregon and Washington (hereinafter designated as "longshore locals") and all employees performing work under the scope, terms and conditions of this Agreement.

The parties hereto are the International of the International Longshoremen's and Warehousemen's Union and the coastwide Pacific Maritime Association. All property rights in and to the Pacific Coast Longshore Agreement are entirely and exclusively vested in the Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union respectively, and their respective members. In the case of the International Longshoremen's and Warehousemen's Union, a majority of the members of both the individual and combined locals covered by this Agreement shall be necessary to designate any successor

(Exh. 4, 1-2)

412a

Exhibit 4

organization holding property rights and all benefits of this Agreement, and if an election is necessary to determine a majority of both individual and combined locals in order to establish the possessors of all rights and benefits under this [2] Agreement, such election shall be conducted under the auspices and the supervision of the Coast Arbitrator provided for in Section 17, provided that such designation or election is not in conflict with any paramount authority or lawful or statutory requirements.

SECTION 1

**SCOPE OF THIS AGREEMENT AND ASSIGNMENT OF
WORK TO LONGSHOREMEN**

1.1 All movement of cargo on vessels of any type or on docks or to and from railroad cars and barges at docks shall be covered by this Agreement and all labor involved therein is assigned to longshoremen with the exceptions and enlargements set forth in this Section 1.

1.11 This Agreement covers the movement of outbound cargo only from the time it enters a dock and comes under the control of any terminal, stevedore, agent or vessel operator covered by this Agreement and covers movement of inbound cargo only so long as it is at a dock and under the control of any vessel operator, agent, stevedore, or terminal covered by this Agreement.

1.2 Dock work provisions.

1.21 The Employers are not required to perform the following dock work, or any parts thereof:

(a) High piling cargo and breaking down high piles of cargo,

(Exh. 4, 2-4)

413a

Exhibit 4

- (b) Sorting of cargo,
- [3] (c) Movement of cargo on the dock or to another dock,
- (d) The removing of cargo from cargo boards,
- (e) Building any loads of cargo on the dock,
- (f) Multiple handling of cargo.

However, when an employer chooses to perform any such dock work, it is work covered by this Agreement and is assigned to longshoremen. Carriage of cargo between docks by barge or rail or by trucks on public roads is not longshore work.

1.22 Cargo received on pallet, lift, or cargo boards, or as unitized or packaged loads shall not be rehandled before moving to ships' tackle, unless so directed by the employer.

1.23 Any load of cargo discharged from a vessel may be dock stored just as it left the hatch.

1.24 Any standard maximum load of cargo, as defined in Section 14, discharged from a vessel may be rearranged if necessary in order to be doubled up or high piled. Such cargo shall not be considered high piled unless stored more than two loads high.

1.25 Cargo may be removed by the consignee or his agent, without additional handling by longshoremen except for breaking down high piles and any other work as the employer may choose to have done under 1.21.

1.26 If jurisdictional difficulties arise in connection with the performance of dock work, whatever jurisdictional agreements are reached shall not result in multiple handling.

[4] 1.27 Provisions relating to sorting or subsorting cargo to marks shall not prohibit a drayman from taking

Exhibit 4

or rearranging such already sorted cargo for the purpose of properly loading his truck.

1.28 Masonite, hardboard and similar commodities are not high piled if the commodity is dock stored for delivery to a truck in piles not to exceed approximately six (6) feet in height.

1.3 Any class of seamen in the employ of a vessel operator may do the work herein assigned to longshoremen that such seamen in their class now do, or may do, by practice arrived at by mutual consent of the parties or the Joint Coast Labor Relations Committee.

1.4 The Union may at any time, in general or limited terms, waive in writing the right of longshoremen to do any portion of the work herein assigned to longshoremen or so accept an interpretation of such assignment, and to the extent and for the time that such waiver or interpretation is accepted by the Association in writing the employer may assign or permit assignment of excepted work to any other class of workers consistent with such waiver or interpretation. Among the waivers and interpretations that have been made and accepted are:

1.41 The Employers have the right to have trucks come under the hook to move heavy lifts, dunnage, lining material, long steel, booms, and ship-repair parts directly from truck to ship and/or ship to truck.

[5] 1.42 Longshoremen will load or discharge trucks operating in direct transfer to or from the ship and otherwise will work on trucks when directed to do so by the employer and no objection thereto is raised by the truck driver or his union.

1.43 Teamsters may unload their trucks, by unit lifts or piece by piece, to the area designated by the employer at

Exhibit 4

which point the trucking or drayage company or shipper releases control of the cargo.

1.44 Teamsters may load their trucks piece by piece from cargo boards or with unit lifts and build loads and otherwise handle cargo on their trucks or tailgates and on loading platforms and aprons.

1.45 The Employers are free to handle cargo at industrial docks in accordance with industrial dock practices used in the past.

1.46 Where a nonmember of the Association has control over the cargo at its premises or on its vessel, such nonmember's regular employees may perform work assigned to longshoremen herein while such cargo is out of the control of any member.

1.5 All machinery, equipment and other tools now or hereafter used in moving cargo shall be operated by longshoremen when used in an operation covered by this Agreement and the operation thereof is assigned to longshoremen and is covered by this Agreement, provided that exceptions thereto—as to individual nonlongshoremen or classes of workers who are not longshoremen and as to tools or classes of tools—may be continued and any exceptions may [6] be set up, modified or eliminated by joint agreement of the Association and the Union.

1.51 The individual employer shall not be deemed to be in violation of the terms of the Agreement assigning work to longshoremen if he assigns work to a nonlongshoreman on a basis of a good-faith contention that this is permitted under an exception provided for herein.

1.52 Should there be any dispute as to the existence or terms of any exception, or should there be no reasonable

Exhibit 4

way to perform the work without the use of nonlongshoremen, work shall continue as directed by the employer while the dispute is resolved hereunder.

1.53 Any such dispute shall be immediately placed before the Joint Coast Labor Relations Committee by the party attacking any claimed exception or proposing any change in an exception or any new exception. The Joint Coast Labor Relations Committee decision shall be promptly issued and shall be final unless and until changed by the parties or that Committee. The Committee may act on the grounds set forth in 1.54 or on any other grounds. Both parties agree that its position on such a dispute shall in no case be supported by, or give rise to threat, restraint or coercion.

1.54 Any such dispute that is not so resolved by the Committee within seven (7) days after being placed before it, may be placed before the Coast Arbitrator on motion of either party. The Arbitrator shall decide whether an exception should be upheld [7] and may do so on the following grounds only:

(a) Nonlongshoremen were assigned the skilled or unskilled labor in dispute under practices existing as of January-August 10, 1959, arrived at by mutual consent and as thereafter modified or defined by the parties or the Joint Coast Labor Relations Committee; or

(b) The individual nonlongshoreman involved has been dependent on longshore work of the nature involved in the dispute so that the equities in favor of his continuing to make his livelihood in the performance of longshore work outweigh the equities in favor of having this work done by longshoremen; or

(Exh. 4, 7-8)

417a

Exhibit 4

(c) There are available no longshoremen or too few longshoremen fully skilled in the operation of the tool in the port involved and there are available in the port (or in the larger area in which skilled longshoremen are not available) nonlongshoremen having high skill in the operation of the tool; or

(d) There is a shortage of longshoremen in the port or area; or

(e) Tools are not available on a bare boat basis and reasonable bona fide efforts to obtain them have been made and there is no reasonable substitute tool available.

1.6 This Agreement shall apply to cleaning cargo holds, loading ship's stores, handling lines, marking lumber, hauling ship, lashing, etc. Existing practices under which other workers perform such work [8] may be continued at the option of the Association.

1.7 Definitions.

1.71 The term "longshoreman" as used herein shall mean any man working under this Agreement.

1.72 The term "dock" as used herein shall mean any moorage—anchorage, pier, wharf, berth, terminal, waterfront structure, dolphin, dock, etc.—at which cargo is loaded to or discharged from ocean going vessels or received or delivered by an employer covered by this Agreement. The term "dock" does not include any facility at which vessels do not moor.

1.8 An employer in a port covered by this Agreement who joins the Association subsequent to the execution hereof and who is not a party to any conflicting longshore agreement becomes subject to this Agreement.

Exhibit 4

1.9 When work that is within the scope of this Agreement is assigned pursuant hereto to nonlongshoremen, the terms and provisions of this Agreement need not apply to such work.

* * *

[14] SECTION 3

GUARANTEES

3.1 Eight-hour guarantee.

3.11 Applicability and method of payment.

3.111 Fully registered and limited register men who are ordered to a job and who report to work and are turned to shall receive a guarantee of eight (8) hours' work or eight (8) hours' pay, except on the third shift where a guarantee of five (5) hours of work or five (5) hours' pay is applicable.

3.112 On the day shift, the eight-hour guarantee of work or pay shall be provided between the hours of 8:00 a.m. and 6:00 p.m.

3.113 On the second shift, the eight-hour guarantee of work or pay shall be provided within a spread of nine (9) hours from the normal starting time, or in the San Francisco Bay Area from the beginning of a late subsequent start permitted under the present provisions in the San Francisco working rules. The spread is enlarged by one (1) hour for a late initial start.

3.114 In the event eight (8) hours of work cannot be provided and dead time results, such time on the day shift from Monday through Friday shall [15] be paid for at the straight time rate of pay. Dead time shall not be charged against the six-hour day. On the second shift, week ends and holidays, dead time shall be paid for at the overtime

(Exh. 4, 15-16)

419a

Exhibit 4

rate of pay of 1.5 times the straight time rate. No penalty cargo rates shall be paid for dead time hours.

3.115 A man shall have only one eight-hour guarantee in any one day (See 3.28).

3.12 Exceptions to eight-hour guarantee.

3.121 The eight hour guarantee shall not apply in the following circumstances:

3.1211 When men are neither turned to nor ordered to stand by (See 3.22);

3.1212 When men are turned to or ordered to stand by and work cannot commence, continue or resume because of bad weather (such determination to be made by the employer) and the men are not ordered back after a midshift meal (See 3.23);

3.1213 When extra longshoremen from the skilled classifications are ordered and turned to on an operation of short duration and are not shifted thereafter to comparable work on other docks or ships and are not ordered back after a midshift meal (See 3.24);

3.1214 When men employed at Selby, California, are not shifted to other operations to fill out the eight-hour guarantee (See 3.27); and

3.1215 As provided in 3.4.

3.122 Where men have been ordered and fail to report to work at all or on time, thus delaying [16] the start of an operation, the time lost thereby until replacements have been provided or until the man or gang has been turned to shall be deducted from the eight-hour guarantee.

3.123 When gangs are traveled and, as a result, their starting time is later than 9:00 a.m. so that it is impossible to fill out the eight-hour guarantee between 8:00 a.m. and

Exhibit 4

6:00 p.m., the guarantee shall be pay or work from actual starting time until 6:00 p.m., except for the meal hour. The same principle shall apply to a night shift start.

3.124 When hours are lost as a result of stop-work meetings, or mutual agreement of the ILWU and PMA, such hours shall be deducted from the eight-hour guarantee.

3.125 In those ports where a 4:00 p.m. or 5:00 p.m. stop is provided by rule for specific days, the guarantee on such days shall be from the starting time, which for payroll purposes can be no later than 9:00 a.m., to such 4:00 p.m. or 5:00 p.m. stop.

3.126 When men are employed at Selby, California, the employer may shift the men to other operations to fill out an eight-hour guarantee, otherwise the guarantee is only four (4) hours. If men are not shifted to other work but are ordered back after a midshift meal, a second four-hour minimum shall apply.

3.13 Accompanying the obligation placed upon the Employers to furnish eight (8) hours of work each shift is the obligation on the part of the men to shift from one job to another for the purpose of [17] working a full shift when such move is ordered by the Employers. Subject to the provisions hereunder the Employers have the right to shift men and gangs in order to fill out the work guarantee. Men and gangs shall shift as ordered.

3.131 To fill out his eight-hour work guarantee, a skill rated longshoreman may be shifted only to skill rated work suitable to his qualifications.

3.132 Employers may shift men in ship gangs to any other work including all dock and car work in order to fill out the work guarantee.

3.133 Dockmen shall not be shifted to work aboard ships to get the eight-hour guarantee but may be shifted to any work on docks, cars or barges.

Exhibit 4

3.1331 Dockmen will be released when there is no further work for them or on normal "knock off" day (as provided by local working rules) on a dock, whichever comes first.

3.1332 Dock gangs and/or men assigned to work against a ship will be released at the end of the shift when their work for that vessel is completed. After the ship sails, the employer may retain dockmen (against that ship) as required to handle that ship's cargo on the dock even though the ship gangs have been released.

3.1333 Dock gangs and/or men assigned to work on a dock will do any dock work. These men can be moved anywhere at any time on the dock and can be shifted temporarily to work against a ship or to another dock in order to fill out or fulfill their guarantee and then shifted back to their usual dock [18] work. These men can also be shifted to work against a ship when the dock units assigned to a ship are not complete.

3.1334 Dock units and/or men who are assigned to work against a ship can be moved anywhere to work against the ship and may be shifted or transferred as follows:

3.13341 To any other dock work when there is no work against the ship at the beginning of the shift or during the course of the shift, to be returned to work against the ship when such work becomes available.

3.13342 To any other dock work to fill out the eight-hour guarantee.

3.13343 To another ship for a late start; or to another ship which is going to shift or sail; or in other situations to avoid other eight-hour guarantees.

3.13344 When the ship gang is working and the dockmen are not required. This clause will be interpreted to

Exhibit 4

mean that men will not be transferred away for unreasonably short periods.

3.13345 If the ship gang is shifted to another vessel or to do dock work.

3.13346 If the ship gang is working a high line operation or from a barge or other cargo handling that does not require any or all of the dockmen.

3.13347 When dockmen are shifted from the first ship and further work will take place on that ship, the men may be transferred to other [19] work in accordance with 3.13341 to 3.13346 inclusive above, and unless peeled off shall be ordered back to the first ship either during the same shift or the next day. If there is no further work against the first ship, such men shall be released at the end of the shift.

3.13348 Dock units or dockmen do not have gear priority. Dock units or dockmen may be peeled off in the same manner as ship gangs and the remaining dock units or men may be used against all gears.

3.134 The employer shall order swingmen (ship or dockmen) when such men are necessary. These swingmen shall be ordered for the shift when it is reasonably anticipated that they will be used in the hold and may be used for any dock work and/or for hold work in any hatch.

3.135 Employers may shift men from shovel and freezer work to any other work including all dock and car work in order to fill out a shift. When so shifted, the penalty cargo rate shall not prevail. The employer may not shift men dispatched for general cargo to shovel or freezer work.

3.136 The employer shall have the right to peel off gangs at any time during a shift or at the end of a shift. The remaining gangs can work at all gears.

Exhibit 4

3.1361. The Employers have the right to order back after any shift only such gangs as are needed to finish the remaining work. Such gang or gangs ordered back must be the gang or gangs which [20] the employer believes in good faith have the most work to do at their gear. They may be required to finish the work at the gear of the released gangs. Under such circumstances the gear priority of the gangs released is suspended. Any gang peeled off under this rule cannot be replaced at its gear by a new gang from the dispatching hall until the second subsequent comparable shift.

3.1362 Gangs ordered to work under conditions which such gangs contend violate gear priority rules shall work as directed and claim(s) for such violation shall be presented by the Union. If it is established that a gear priority violation did occur, then it will be automatic that the amount of time another gang worked in the hatch in which the gear priority violation was claimed will be paid the gang whose gear priority was violated on an hour for hour basis, unless the employer on whose ship the alleged gear priority violation occurred maintains that such incident happened for reasons beyond the employer's control. The employer may then take that position and process it through the grievance procedure to the Area Arbitrator for final decision.

3.137 The shifting of registered and limited registered men to fulfill the guarantee shall be carried out without bumping.

3.138 Any gear priority rule will not prevent the shifting of men and gangs for the purpose of fulfilling the eight-hour guarantee.

3.139 "Center line" and "imaginary bulkhead" and similar practices which result in arbitrary [21] division of work among gangs shall be eliminated.

Exhibit 4

3.14 Rules and examples applicable to shifting men or gangs:

3.141 Initial late start orders may be placed at the dispatching hall to work a ship and to shift to a second ship for a late start on the second ship. Men so ordered shall be dispatched for the second ship, with orders to work the first ship only as a fill-in.

3.142 Men or gangs may be ordered to shift from a job or a ship that they have completed to a late start on another job or ship. Such men or gangs will be released at the end of the shift on the second job and may be required to work no longer than the extended hours as provided in Section 2.

3.143 Men or gangs may be ordered to shift from a job or a ship where they have not completed their original assignment or permit a late start on another job or ship, or in order to fill out the eight-hour work guarantee, or in order to finish the second ship for shifting or sailing. These men or gangs will be ordered back to their original job during that shift or for the start of the next day's shift. If extended hours are required to permit the second ship to shift or sail, the men or gangs will work up to but not beyond the end of the extension provided in Section 2.

3.144 Men or gangs may be ordered to shift from a job or a ship which they have not completed but where they have run out of available work—e.g. a delay in arrival of cargo, a breakdown of [22] equipment, a ship that fails to arrive as scheduled, etc.—to another job or ship in order to complete the eight-hour guarantee, and they will be ordered to return to their original job to finish it.

3.145 Shifting of men or gangs under 3.13 or 3.14 may be accomplished without clearance through the dispatching hall.

Exhibit 4

3.146 Gangs will have gear priority on only one ship during a shift and will be released to the dispatching hall at the end of any shift in which they have completed their work on the ship on which they had priority.

3.15 Possible adjustments in small ports:

3.151 The full provisions of the eight-hour guarantee shall prevail in all ports. In ports of six gangs or less adjustments may be made in leeway for late starts because no alternative work is available to fill out the eight-hour guarantee by mutual agreement at the local level provided there is approval by the Joint Coast Labor Relations Committee.

3.2 Four-hour minimum.

3.21 Longshoremen, other than fully registered or limited registered men, who are ordered to a job and are turned to shall receive a minimum of four (4) hours' work or four (4) hours' pay.

3.22 Men who are ordered, report for work and are neither turned to nor ordered to stand by shall receive the four-hour minimum, except where inability to turn to is a result of insufficient men to start the operation. Present port rules defining the number of men to start operations shall apply.

[23] 3.221 When an operation cannot commence at the designated starting time because of failure of at least the minimum required and properly ordered number of men to appear, then pay shall be as follows:

3.2211 Units not filled to minimum complement as provided in local working rules shall receive no pay unless they receive and accept an order to stand by awaiting additional men as needed to complete the minimum complement of men. Such standby shall, if accepted, be paid for and limited to one hour.

Exhibit 4

3.2212 Other units or men directly related to the operation who report for work as ordered shall be turned to. They may be released one hour later if the balance of the work does not commence or continue thereafter because of insufficient men being present. If they are so released they shall receive a four-hour minimum in addition to the time they may have worked prior to the commencement of the shift.

3.2213 Where possible, units of less than the minimum requirements of men shall be consolidated to provide proper complements and the men shall so combine or shift as provided by this Agreement.

3.222 When the required minimum number of men report and turn to as directed and work continues up to the midshift meal hour and there are men who as yet have not reported, then either the men or the employer can determine that work cannot [24] continue thereafter. When work ceases under these circumstances or if the employer determines that the operation is not satisfactory prior to the meal hour then the minimum pay for all related men or units shall be time worked or four (4) hours, whichever is the greater.

3.223 When the required minimum complement reports and the operation commences and cannot be continued because of refusal of men to continue working with less than the required number of men, then pay shall be as follows:

3.2231 Such men or units of men refusing to continue work shall be paid on the basis of time worked.

3.2232 Related men or units of men shall be shifted to other work, or shall be released with a four-hour minimum.

3.2233 Such a refusal to continue work shall not be considered a violation of this Agreement.

(Exh. 4, 24-25)

427a

Exhibit 4

3.23 When men are turned to or ordered to stand by and work cannot commence or continue because of bad weather (such determination to be made by the employer), the four-hour minimum shall apply unless the men are ordered back after a midshift meal. Any dead time resulting from bad weather shall be paid under 3.114.

3.24 When an operation of short duration requires extra longshoremen from the skilled classifications and such men are ordered and turned to, they shall have a four-hour minimum, and can be transferred [25] to comparable work on the original dock or ship to fill out the four-hour minimum.

3.25 When a gang quits during the course of the eight (8) hours of work or quits by refusal to work the extensions for shifting or sailing and a replacement gang is ordered from the dispatching hall then the replacement gang shall have a four-hour minimum guarantee for that shift.

3.26 Any replacements ordered or accepted by the employer is to be paid for time worked, or the four-hour minimum, whichever is greater, on his initial shift.

3.27 When men are employed at Selby, California, they have a four-hour guarantee. If the employer shifts the men to other operations or orders them back after a midshift meal then the eight-hour guarantee shall apply.

3.28 A man who has received an eight-hour guarantee and has been dispatched from the hall to a new job shall receive an additional four-hour guarantee for the second job. Overtime is payable only after six (6) hours of straight time work on both jobs.

3.3 Three-hour guarantee.

3.31 When men are ordered back after supper they shall be paid a minimum of three (3) hours.

Exhibit 4

3.4 General provisions as to guarantees.

3.41 There shall be no guarantee for any man who is released for cause or who quits or who refuses to shift as provided under 3.13 or who loses [26] hours as a result of ILWU unilateral action or who is not turned to where inability to turn to is a result of insufficient men to start the operation or who is turned to and works less than his guaranteed time by reason of illness or injury. Such men shall be paid only for their actual working time.

3.42 When men are late in reporting at the designated shift starting time on an initial or subsequent start, if they are turned to, they shall then be turned to at and paid as of the next quarter-hour; that is, the quarter-hour, the half-hour, the three-quarter hour or the even hour, and time lost between the designated starting time and time turned to shall be deducted from the guarantee.

3.43 When men are not sent to eat before the beginning of the second hour of the two-hour meal period, pay for the work in the second hour shall be one-half hour if worked less than one-half of such hour and one full hour if worked one-half or more than one-half of such hour.

3.44 When men are knocked off work six (6) minutes or more after the even hour, they shall be paid to the next one-half hour and when knocked off thirty-six (36) minutes or more past the even hour, they shall be paid to the end of the hour.

3.45 The guarantees of this Section 3 do not apply to longshore baggagemen or linesmen or to gearmen called in on an emergency.

3.451 Guarantees applicable to longshore baggagemen, linesmen and gearmen called in on an emergency may be adopted or modified by unanimous [27] action of the Joint

(Exh. 4, 27-29)

429a

Exhibit 4

Coast Labor Relations Committee and, subject to the control of such Committee so exercised, existing and future local rules or mutually agreed practices shall be applicable.

3.46 No rule is to be used as a subterfuge for firing gangs.

* * *

[28] SECTION 6

WAGES

6.1 Wage Rates.

6.11 The rates of pay for longshore work shall be as set forth in the Wage Rate Schedule and shall be effective as set forth therein.

6.12 The straight time rate (which may be the basic straight time rate or that rate plus applicable straight time penalty cargo rate and/or skill differential) shall be paid for work in the basic, normal or regular workday and workweek consisting of the first six (6) hours worked between 8:00 a.m. and 5:00 p.m., Monday through Friday. For work outside of such basic, normal or regular workday or workweek extra compensation in the form of premium rates shall be provided in accordance with the provisions of 6.2.

6.2 Straight and overtime rates shall be paid according to the following schedule:

6.21 Straight time rate.

6.211 First six (6) hours worked between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

6.22 Overtime rate of 1.5 times the straight time rate.

[29] 6.221 All work in excess of six (6) hours between 8:00 a.m. and 5:00 p.m.

Exhibit 4

6.222 All work between 5:00 p.m. and 8:00 a.m. on weekdays and all work on Saturdays, Sundays and Agreement holidays, except such work as requires a higher premium rate as provided below.

6.223 When working after 12:00 noon without release for meal—except on Saturdays, Sundays and Agreement holidays—and work continuing thereafter without an opportunity to eat.

6.23 Time and one-half the 1.5 overtime rate.

6.231 When working into the second hour of the meal period on the second shift without release for meal and work continuing thereafter without an opportunity to eat.

6.232 When working after 12:00 noon without release for meal—on Saturdays, Sundays and Agreement holidays—and work continuing thereafter without an opportunity to eat.

6.233 Work in excess of five (5) consecutive hours without an opportunity to eat when the rate then prevailing is the overtime rate.

6.234 All work in excess of eleven (11) hours in any one shift.

6.24 Overtime premium rate of 1.8 times the straight time rate.

6.241 The first five (5) hours of work during overtime hours when the man's work begins at 2:30 a.m. or 3:00 a.m.

6.25 Time and one-half the 1.8 overtime premium rate.

[30] 6.251 Work in excess of five (5) hours when the man's work begins at 2:30 a.m. or 3:00 a.m.

6.3 Skill differentials.

(Exh. 4, 30-31)

431a

Exhibit 4

6.31 In addition to the basic wages for longshore work, additional wages to be called skill differentials shall be paid for the types of work specified below.

6.32 During overtime hours, the skill differential shall be one and one-half times the straight time differential.

6.33 Skill Differentials By Areas

Skill	So. Cal.	No. Cal.	Ore.	Wash.
Blade Trucker—Aboard ship	—	—	—	.25
Blade Trucker—On dock	—	—	—	.15
Boom Man	—	—	.15	.15
Burton Man	.15	—	.15	.15
Bulldozer Operator ³	.30	.30	.30	.30
Combination Lift Truck--				
Jitney Driver	.15	.15	.15	.15
Crane Chaser	—	—	.15	—
Crane Driver	.40	.40	.40	.40
Donkey Driver	—	—	.15	.15
Dragline Driver	.15	.15	.15	.15
Gang Boss	.40 ¹	.20	.20	—
			.25 ²	
[31] Guy Man	.15	—	—	—
Hatch Boss Tender ⁴	—	—	—	.25
Hatch Tender	.15	.15	.15	.15
Lift Truck Operator	.15	.15	.15	.15
Payloader Operator ³	.15	.15	.15	.15
Ross Carrier Driver	.15	.15	.15	.15
Sack Turner	—	—	.15	.15
Side Runner	—	—	.15	.15
Stowing Machine Driver	—	—	.15	.15
Winch Driver	.15	.15	.15	.15

6.34 The rate of pay for Jitney Drivers shall be the basic longshore rate. When a Jitney Driver is dispatched

¹ Applies to Pt. Hueneme only.

² Coos Bay, Newport and Bandon .25; other Oregon ports .20.

³ Two men shall be employed for each machine in continuous operation.

Exhibit 4

to drive Jitney, he may be assigned to other work to fill out his minimum guarantee. Combination Lift Truck-Jitney Drivers may be required to work both as Jitney and Lift Truck Drivers. When a Combination man, dispatched as such, is required to drive Jitney, he shall be paid the skill differential, and shall not be replaced during the job by a man working at less than the combination rate.

6.35 The parties or the Joint Coast Labor Relations Committee shall establish coastwise skill rates for operating cranes and other tools and, where appropriate, [32] for operating machinery not presently in use.¹

6.4 Penalty cargo rates.

6.41 In addition to the basic wages for longshore work, additional wages to be called penalties shall be paid for the types of cargoes, conditions of cargoes, or working conditions specified in the Wage Rate Schedule.

6.42 The parties will study the entire Penalty Cargo List with the intent of revising it to eliminate commodities where packaging or mode of handling has changed so as to remove the obnoxious features, and to add new commodities where there are obnoxious features justifying a penalty and to provide the penalties applicable to crane drivers. Any disagreement reached shall be resolved by the Coast Arbitrator.

6.43 Except where otherwise specified, the penalty cargo rates shall apply to all members of the longshore gang and dockmen working the penalty cargo.

6.44 Where two penalty rates might apply, the higher penalty rate shall apply and in no case shall more than one penalty rate be paid.

¹ Applies to Tacoma and Anacortes only.

¹ Supplement IV will attach hereto as adopted by the Joint Coast Labor Relations Committee.

Exhibit 4

6.45 During overtime hours, including those hours worked in shifts beginning at 2:30 or 3:00 a.m., the penalty cargo rate shall be one and one-half times the straight time penalty cargo rate.

[33] 6.46 The straight time penalty rate for working explosives shall at all times equal the basic straight time rate.

6.47 Where skill differentials and penalties both apply, the allowance for both the skill differential and the penalty shall be added to the basic rate and shall be augmented during overtime hours as provided in this Section 6.

6.5 Subsistence.

Subsistence rates when payable shall be five dollars (\$5.00) per night for lodging and two dollars (\$2.00) per meal.

6.6 Personal effects.

Men shall be reimbursed for damage (other than usual wear and tear) to personal effects which are damaged on the job, provided satisfactory evidence is presented to the Joint Port Labor Relations Committee. The amount of the reimbursement shall be decided by the Committee, which shall adhere to the following rules:

6.61 Personal effects are items which a man needs to take on the job to perform his work, and there must be proven need for the item on the job.

6.62 Any damage must be a direct result of performing work and must be reported to company supervision on the job when it occurs.

6.63 The damaged item must be exhibited to the Committee for determination of the depreciation and extent of damage.

Exhibit 4

6.64 The claim must be accompanied by prima [34] facie evidence that the item was damaged on the job, and negligence and carelessness are factors to be given consideration.

6.65 If reimbursement is in order, the item will either be repaired or replaced in kind or reimbursed at its depreciated value.

6.66 Any second approved claim, by an individual, for broken glasses, may be reimbursed by replacement with safety-type glasses.

6.67 Claims for lost or stolen items are not valid.

* * *
[42] SECTION 8

HIRING, DISPATCHING, REGISTRATION AND PREFERENCE

8.1 Dispatching halls.

8.11 The hiring and dispatching of all longshoremen shall be through halls maintained and operated jointly by the International Longshoremen's and Warehousemen's Union and the Pacific Maritime Association in accordance with the provisions of Section 17. There shall be one central dispatching hall in each of the ports with such branch halls as shall be mutually agreed upon. All expense of the dispatching halls shall be borne one-half by the local union and one-half by the Employers.

8.12 Any longshoreman who is not a member of the Union shall be permitted to use the dispatching [43] hall only if he pays his pro rata share of the expenses related to the dispatching hall, the Labor Relations Committee, etc. The amount of these payments and the manner of paying them shall be fixed by the Joint Port Labor Relations Committees.

(Exh. 4, 43-44)

435a

Exhibit 4

8.13 Any non-Association employer shall be permitted to use the dispatching hall only if he pays to the Association for the support of the hall the equivalent of the dues and assessments paid by the Association's members. Such non-member employers shall have no preference in the allocation of men, and shall be allocated men on the same basis as Association members.

8.14 Longshoremen not on the registered list shall not be dispatched from the dispatching hall or employed by any employer while there is any man on the registered list qualified, ready and willing to do the work.

8.2 Dispatching hall personnel.

8.21 The personnel for each dispatching hall, with the exception of Dispatchers, shall be determined and appointed by the Joint Labor Relations Committee of the port. Dispatchers shall be selected by the Union through elections in which all candidates shall qualify according to standards presecribed and measured by the Joint Labor Relations Committee of the port. If it fails to agree on the appropriate standards or on whether a candidate is qualified under the standards, the dispute shall be decided in accord with provisions of Section 17.

[44] 8.22 The term of office of any Dispatcher shall be at least one year.

8.23 All personnel of the dispatching hall, including Dispatchers, shall be governed by rules and regulations of the Joint Port Labor Relations Committee, and shall be removable for cause by the Joint Port Labor Relations Committee.

8.24 The Association shall be permitted to maintain a representative in the dispatching hall. The Joint Port Labor Relations Committee shall permit any authorized representative of the Association or the Union to inspect dispatching hall records.

Exhibit 4

8.3 Registration.

8.31 The Joint Port Labor Relations Committee in any port, subject to the ultimate control of the Joint Coast Labor Relations Committee, shall exercise control over registered lists in that port, including the power to make additions to or subtractions from the registered lists as may be necessary. In each port there shall be maintained a list of longshoremen showing their registration status under this Agreement. When objecting to the registration of any man, members of the Joint Port Labor Relations Committee shall be required to give reason therefor.

8.32 Any longshoreman registered by a Joint Port Labor Relations Committee in accordance with this Agreement shall thereby acquire joint coastwide registration under the Pacific Coast Longshore Agreement and the Master Agreement for Clerks, [45] Checkers, and Related Classifications. The rights and obligations of coastwide registration in regard to transfers between ports, visiting, and leaves of absence are set forth in Supplement I to this Agreement. The rights and obligations of coastwide registration in regard to transfer of registered longshoremen to registered clerk status and vice versa are set forth in Supplement II to this Agreement.

8.33 Either party may demand additions to or subtractions from the registered lists as may be necessary to meet the needs of the industry.

8.34 Each registered longshoreman has the obligation to request a leave of absence if he intends to absent himself from work for a period of thirty (30) days or longer and in other circumstances as may be covered by port rules under Supplement I. A registered longshoreman who fails to work for thirty (30) days, except when on approved leave, and whose facts and reasons for such absence are

(Exh. 4, 45-47)

437a

Exhibit 4

not acceptable to the Joint Port Labor Relations Committee, may be de-registered.

8.4 Preference of employment.

8.41 First preference of employment and dispatch shall be given to fully registered longshoremen who are available for employment covered by Section 1 of this Agreement in accordance with the rules and regulations adopted by the Joint Port Labor Relations Committee. A similar second preference shall be so given to limited registered men. The Joint Coast Labor Relations Committee shall be authorized to effectuate such preferences in such [46] manner and for such times and places as it determines in its discretion.

8.42 Dispatching of men and gangs shall be under the principle of low-man, low-gang, first-to-be-dispatched, except where local dispatching rules provide otherwise for dispatching of special skilled men and gangs.

8.43 There shall be no favoritism or discrimination in the hiring or dispatching or employment of any longshoreman qualified and eligible under the Agreement.

8.44 Any longshoreman or dispatching hall employee found guilty by the Joint Port Labor Relations Committee of favoritism or discrimination or bribery shall immediately be discharged and dropped from the registered list.

* * *

[47] SECTION 10

ORGANIZATION OF GANGS, GANG SIZES AND MANNING,
AND METHODS OF DISPATCHING

10.1 The Joint Port Labor Relations Committee shall determine the methods of dispatching for the port. Gangs and men shall be dispatched only as ordered by the em-

Exhibit 4

ployer. The Employers shall have the right to have dispatched to them, when available, the gangs in their opinion best qualified to do their work. Subject to the provisions of this Agreement, gangs and men not assigned to gangs shall be so dispatched as to equalize their work opportunities as nearly as practicable, having regard to their qualifications for the work they are required to do. The [48] Employers shall be free to select their men within those eligible under the policies jointly determined and the men likewise shall be free to select their jobs.

10.11 The employer shall have until 2:00 p.m. to file orders or cancel orders for gangs for the second and third shifts.

10.2 The organized or make-up minimum basic ship gang for general break bulk cargo (hereinafter called the "basic gang") shall consist of men as follows:

- A gang boss (in ports where such are used)
- A winch driver (two on single winches)
- A hatch tender
- Two (2) sling or front men
- Four (4) holdmen (including any side runners used).

10.21 Except as hereinafter provided:

10.211 On loading operations: when the loads are being landed in the vessel at their place of rest, the basic gang can be used; when the loads are being stowed by mechanical equipment after landing, the basic gang shall be supplemented by the necessary driver(s).

10.212 On discharge operations, this basic gang can be used when the loads are being moved to the point of removal from the vessel by mechanical equipment plus

Exhibit 4

driver(s) or are ready for slinging without additional work except the placement of slings or similar devices.

10.22 When the cargo handling operation to [49] be performed requires only a basic gang, that gang may be used to rig, uncover and cover hatches without additional men.

10.23 When cargo is to be hand-handled, then two swingmen shall be used with the basic gang for all discharge operations, and four swingmen shall be used for all loading operations. Exception: When space and safety are the factors that dictate that only one load can be handled at a time, prior to the handling of the second load, then the basic gang can perform such handling provided it is to last for one hour or more.

10.24 Such swingmen as are called for herein may be used for any dock work and/or for hold work in any hatch and may be shifted as provided in 3.132 and the second winch driver may be shifted as provided in 3.131. Swingmen, skilled or unskilled, and the second winch driver, shall not be added to the basic gang complements in order to have ship's time guaranteed. They shall have the eight-hour guarantee and the right to call-backs without favoritism. They may be released at the end of any shift when they are not needed to start the next shift.

10.25 Longshore work such as rigging, laying dunnage, etc. in connection with loading and discharging is to be performed as ordered.

10.26 The employer shall be permitted to bring machinery and machine drivers into the hold and to swing out an equivalent number of holdmen, provided four basic holdmen are retained at all times.

10.27 The minimums set forth can be supplemented [50] in any numbers as ordered by the employer, while needed, without precedent.

Exhibit 4

10.28 If loads above contractual limits are to be moved manually, and additional men or machines are required to guarantee against onerous individual workload, and to maintain safety standards, they will be provided.

10.3 Manning for existing operations shall continue with the employer having the right to ask for review of such manning through the contract machinery in the following situations:

(a) Where existing manning for other general cargo operations, including packaged lumber and mixed operations of break bulk and unitized cargo (other than hand-handled operations), exceed the basic gang; provided, however, that such review shall not seek to reduce the manning below said basic gang, and shall be based on a determination of necessary men as defined in 15.2.

(b) For remaining existing operations, such review shall be based on a determination of necessary men as defined in 15.2 and shall not be limited by the basic gang structure.

10.31 In existing operations, where changed methods having already been introduced which eliminate hand-handling of cargo on a piece by piece basis; or which eliminate hand-handling of units (as in cases of straight runs of unitized cargo, mechanically landed, lifted and stowed and vice versa); or which eliminate the need for holdmen by removal [51] of devices (as in the case of chutes in scrap operation), the procedure of 10.3(b) shall apply.

10.4 When new methods of operation are introduced, the Employers shall discuss the proposed manning with the Union. If agreement cannot be reached at the coast level, the Employers shall have the right to put their manning in effect, subject to final resolution through the Agreement grievance machinery.

(Exh. 4, 51, 55)

441a

Exhibit 4

10.5 The use of dock gang units shall continue with flexibility in their usage. A dock gang need not be released as a unit.

10.6 If, during a shift, a change is made from a discharge to a loading operation, and the change requires additional men under the provisions of this Section 10, if the employer is unable to swing in men from ship or dock from his own employees, the holdmen will work without additional men for a maximum of fifteen (15) loads but not more than one hour.

10.7 The safeguards of 15.1 shall apply to gang size and manning.

• • •
[55] SECTION 14

SLING LOAD LIMITS

14.1 Where conditions, number of longshoremen on the dock and in the ship, and the method of operation are the same as in 1937, loads for commodities covered herein built by a longshoreman shall be of such size as the employer shall direct within the maximum limits herein specified, and no employer shall direct and longshoremen shall not be required to build loads covered by this 14.1 in excess of the following standard maximum sling loads:

Commodity	Sling Load
(1)-Canned Goods	
24-2½ tall, 6-12's tall and 48-1 tall (including salmon)	35 cases
When loads are built of 3 tiers of 12	36 cases
24-1 tall	60 cases
24-2's tall	50 cases
6-10's tall	40 cases
Miscellaneous cans and jars—	
Maximum 2100 lbs.	

Exhibit 4

(2)-Dried Fruits and Raisins

(Gross Weight)

22 to 31 lbs.	72 cases
32 to 39 lbs.	60 cases
40 to 50 lbs.	40 cases
24-2 lbs.	35 cases
48-16 oz.	40 cases

(3)-Fresh Fruits-Standard Boxes

Oranges-Standard	27 boxes
[56] Commodity	Sling Load
Oranges-Maximum	28 boxes
Apples and Pears	40 boxes

(4)-Miscellaneous Products

Case Oil-2-5 gal. cans (hand hauled to or from ship's tackle)	18 cases
Power hauled to or from ship's tackle	24 cases
Cocoanut	12 cases
Tea-Standard	12 cases
Tea-Small	16 cases
Copper slabs (large)	5 slabs
Copper slabs (small)	6 slabs
Copper (bars)	9 bars
Copper (Ingots), Approximately 43 lbs per Ingot	48 ingots
Cotton, under standard conditions	3 bales
Rubber (1 tier on sling), maximum	10 bales
Gunnies, large	2 bales
Gunnies, medium	3 bales
Gunnies, small	4 bales
Rags, large (above 700 lbs.)	2 bales
Rags, medium (500 to 700 lbs.)	3 bales
Rags, small (below 500 lbs.)	4 bales

(Exh. 4, 56-57)

443a

Exhibit 4

Sisal, large	3 bales
Hemp, ordinary	5 bales
Jute, 400 lb. bales	5 bales
Pulp, bales weighing 350 lbs. or more	6 bales
Pulp, bales weighing 349 lbs. or less	8 bales
Steel drums, containing Asphalt, Oil, etc., weighing 500 lbs. or less	4 drums (When Using Chine Hooks)
[57] Commodity	Sling Load
Steel drums, containing Asphalt, Oil, etc., weighing 500 lbs. or less on board (capacity of board-1 tier), maximum of	5 drums
Barrels, wood, heavy, containing wine, lard, etc., maximum of	4 bbls. (when Using Chine Hooks)
Barrels, wood, heavy, containing wine, lard, etc., (capacity of board-1 tier, on board maximum of	4 bbls.
Barrels, wood, containing dry milk, sugar, etc...	6 bbls.
Newsprint, rolls	2 rolls
Newsprint, rolls (when weight is 1800 lbs. or over)	1 roll
(5)-Sacks	
Flour-140 lbs.	15 sacks
Flour-100 lbs.	20 sacks
Flour- 50 lbs.	40 sacks
Flour- 50 lbs. (in balloon sling)	50 sacks
Cement	22 sacks
Wheat	15 sacks
Barley	15 sacks
Coffee-Power haul from and to ship's tackle ...	12 sacks
Coffee-Hand pulled from and to ship's tackle (bags weighing approximately 136 lbs.)	9 sacks

Exhibit 4

[58] Commodity	Sling Load
Coffee-Hand pulled from and to ship's tackle (bags weighing 137 lbs. and over)	8 sacks
Other sacks—maximum	2100 lbs.
(6)—When flat trucks are pulled by hand between ship's tackle and place of rest on dock load not to exceed	1400 lbs.
(7)—Number of loaded trailers (4 wheeler)—to be hauled by jitney as follows: Within the limits of the ordinary berthing space of the vessel	2 trailers
Long hauls to bulk head warehouses or to ad- joining docks or berths	3 trailers
Extra long haul to separate docks or across streets—4 trailers providing that four (4) trailers shall be used only where it is now the port practice.	
(8)—When cargo is transported to or from the point of stowage by power equipment, the following loads shall apply:	
48-1 talls	40
24-1 talls	60
24-2's talls	48
24-2½'s talls	40
6-10's talls	50
6-12's talls	50

[59] 14.11 The package described in the foregoing schedule of maximum load limits on loads covered by 14.1 are for the standard sizes by weight and measurement of 1937. If any commodities named are of a size as to weight and measurement different from that which is specified, the maximum load limit will be changed accordingly for any such commodity, by mutual agreement.

Exhibit 4

14.12 If cargo is being pre-palletized on the dock, the load limits herein specified do not govern.

14.13 It is agreed that the Employers will not use maximum-sized loads or minimal numbers of men as a subterfuge to establish unreasonable speed-ups; nor will the Union or its longshore local(s) resort to subterfuge to curtail production.

14.2 In the case of all commodities other than those listed in 14.1 or on operations not subject to the limitations of 14.1, where operations have changed or where new commodities or operations have developed, loads shall be built and handled as directed by the employer, within safe and practical limits and without speed up of the individual. Any dispute arising with regard to such an operation shall be settled through the grievance machinery with work continuing as ordered by the employer.

14.21 An increase in the number of longshoremen man-handling cargo or the use of machinery to move or stow cargo on the dock or on the ship shall be considered a change in operations that permits [60] the handling of loads larger than those specified in 14.1.

14.3 Loads shall be skimmed only as necessary to an operation and as ordered by the employer.

14.4 The Union shall have the right, without limitation, to raise a claim that an operation imposes an onerous workload on the individual worker and to carry such an issue through the grievance machinery as provided in accordance with Sections 11 and 17 of this Agreement.

SECTION 15

EFFICIENT OPERATIONS

15.1 There shall be no interference by the Union with the Employers' right to operate efficiently and to change

Exhibit 4

methods of work and to utilize laborsaving devices and to direct the work through employer representatives while explicitly observing the provisions and conditions of the Agreement protecting the safety and welfare of the employees. "Speed-up" refers to an onerous workload on the individual worker; it shall not be construed to refer to increased production resulting from more efficient utilization and organization of the workforce, introduction of laborsaving devices, or removal of work restrictions.

15.11 In order to avoid disputes, the employer shall make every effort to discuss with the Union in advance the introduction of any major change in operations.

[61] 15.2 The employer shall not be required to hire unnecessary men. The number of men necessary shall be the number required to perform an operation in accordance with the provisions of 15.1, giving account to the contractual provisions for relief and the fact that during many operations all men will not be working at all times due to the cycle of the operation.

15.3 The Employers shall have the right to propose changes in working and dispatching rules that they claim are in conflict with the intent of provisions incorporated in this Agreement. The Joint Coast Labor Relations Committee may refer proposed changes that are of only local significance to the local level for negotiation. Any such change agreed to at the local level must be approved at the coast level before being put into operation. Any proposal referred to the local level and not resolved within thirty (30) days thereafter shall automatically return to the Joint Coast Labor Relations Committee.

15.4 Any disputes concerning the interpretation or application of provisions of this Agreement relating to the subject matter of this Section 15 may be submitted directly to the Joint Coast Labor Relations Committee.

Exhibit 4

SECTION 16

SAFETY

16.1 Recognizing that prevention of accidents is [62] mutually beneficial, the responsibility of the parties in respect thereto shall be as follows:

16.11 The Union and the Employers will abide by the rules set forth in the existing Pacific Coast Marine Safety Code which shall be applicable in all ports covered by the Agreement.

16.12 The Employers will provide safe gear and safe working conditions and comply with all safety rules.

16.13 Each individual employer will continue to furnish protective clothing or devices as he did on October 18, 1960, even though not specifically required by the Pacific Coast Marine Safety Code. At the local level the parties will from time to time review the questions of protective clothing and devices and arrive at and maintain an orderly procedure for the issuance, safeguarding, and return of the items furnished by the employers.

16.14 The Employers will maintain, direct and administer an adequate accident prevention program.

16.15 The Union will cooperate in this program and develop and maintain procedures to influence all longshoremen to cooperate in every way that will help prevent industrial accidents and minimize injuries when accidents occur.

16.16 The employees individually must comply with all safety rules and cooperate with management in the carrying out of the accident prevention program.

[63] 16.2 To make effective the above statements and promote on the job accident prevention, employer-employee

Exhibit 4

committees will be established in each port. These committees will consist of equal numbers of employer and employee representatives at the job level. Each category of employees should be represented. Employers' representatives should be from the supervisory level. The purpose of the committees will be to obtain the interest of the men in accident prevention by making them realize that they have a part in the program, to direct their attention to the real causes of accidents and provide a means for making practical use of the intimate knowledge of working conditions and practices of the men on the job. It is further intended that this program will produce mutually practical and effective recommendations regarding corrections of accident-producing circumstances and conditions.

* * *
[79] SECTION 18

GOOD FAITH GUARANTEE

18.1 As an explicit condition hereof, the parties are committed to observe this Agreement in good faith. The Union commits the locals and every longshoreman it represents to observe this commitment without resort to gimmicks or subterfuge. The Employers give the same guarantee of good faith observance on their part.

[80] SECTION 19

STEAM SCHOONERS

19.1 The provisions of this Agreement shall apply to all longshoreman's work, as defined in Section 1, on or in connection with steam schooners with the exceptions as set forth below:

19.11 A steam schooner is any dry cargo vessel plying in the steam schooner trade.

Exhibit 4

19.12 The steam schooner trade is hereby defined as the operation of steam schooners between the ports of California, Oregon and Washington and between these ports and British Columbia and Alaska; provided that such definition does not include vessels operating between Seattle and Puget Sound ports and Alaska.

19.13 Longshoremen shall perform all dock work and subject to 1.3, shall work aboard ships in accordance with the following:

19.131 Steam schooners are Class A when longshoremen are being assigned all of the longshore work except the work performed at one hatch or gear, or the work being performed in the handling of certain cargoes requiring the use of two gears, such as piling, poles, logs, etc.

19.132 On each call of a steam schooner operating Class A: at any port the employer assigns the vessel's members of the deck department (hereinafter referred to as "sailor gang") to one hatch selected for reasons of good ship operations. During such call the sailor gang is shifted out of that hatch [81] to handle cargo at another hatch only as stated above in 19.131 or when sufficient longshoremen are not available. For the purposes herein, San Francisco is one port and the East Bay is one port.

19.133 Gear up or down and hatches off or on by the sailors is permitted on Class A vessels. The time for starting longshoremen shall not be delayed beyond the regular starting time for starting a shift in order to permit sailors to do such work.

19.134 Tidewater ports that have a working arrangement which depends on conditions of the tide rather than the hours of the day should define such practices by a local working rule or rules, and until they are placed in writing such past practices shall continue.

Exhibit 4

19.14 LSM-type vessels are Class A provided that longshoremen perform the following work at all times they are available: two hook-on men, one utility man, one hatch tender and, subject to 1.3, one crane operator, both in loading and discharging. Longshoremen shall perform work aboard these vessels only when called upon to do so.

19.15 When an employer fails to assign sufficient work to longshoremen at any hatch or hatches to meet the qualifications for Class A, then a vessel is Class B and in connection therewith longshoremen shall perform work aboard ship only when called upon to do so.

19.151 A vessel may switch from Class A to Class B or from Class B to Class A on an hour by hour basis.

[82] 19.2 No arbitrator may consider or determine any issue regarding the scope of work of longshoremen or others to perform cargo work on steam schooners or make any decision denying the right of crew members to perform such cargo work, but the arbitrators may determine any other question or issue arising in connection with the steam schooner trade, including issues arising under Section 11 and issues regarding classifications A and B.

* * *

[83] SECTION 21

WELFARE, PENSION, MECHANIZATION AND
MODERNIZATION PLANS

21.1 The parties hereto have agreements on the subjects of Welfare, Pensions and on Mechanization and Modernization for longshoremen covered by this Agreement as set forth in the Second Amended ILWU-PMA Welfare Agreement and ILWU-PMA Welfare Fund—Declaration of Trust, the First Amended ILWU-PMA Pension Agreement

(Exh. 4, 83-84)

451a

Exhibit 4

and ILWU-PMA Pension Fund—Declaration of Trust, the ILWU-PMA Supplemental Agreement on Mechanization and Modernization and the Trust Indentures established under the ILWU-PMA Mechanization and Modernization Plan.

[84] SECTION 22

MODIFICATION

22.1 No provision or term of this Agreement may be amended, modified, changed, altered or waived except by a written document executed by the parties hereto.

22.2 All joint working and dispatching rules shall remain in effect unless changed pursuant to Section 15. All other restrictions on the employer or longshoremen that are in conflict with the provisions of this Agreement are null and void.

22.3 The parties agree to meet for the purpose of codifying their agreement with respect to the subject matter covered in arbitrators' awards and rulings of the Joint Coast Labor Relations Committee. The parties will incorporate that agreement into the Pacific Coast Longshore Agreement at a time and in a manner to be agreed to by the parties.

(Exh. 4, 85)

452a

Exhibit 4

[85] IN WITNESS WHEREOF, the parties hereto have signed this Agreement setting forth their agreement signed May 9, 1962 as modified on June 22, 1962.

PACIFIC MARITIME
ASSOCIATION
on behalf of its members.

INTERNATIONAL
LONGSHOREMEN'S AND
WAREHOUSEMEN'S
UNION

on behalf of itself and each
and all of its longshore locals
in California, Oregon and
Washington and all employ-
ees performing work under
the scope, terms and condi-
tions of this Agreement.

/s/ J. Paul St. Sure
/s/ J. A. Robertson

/s/ Harry Bridges
/s/ H. J. Bodine
/s/ L. B. Thomas

(Exh. 4, 86-87)

453a

Exhibit 4

[86] WAGE SCHEDULE 1962-1963 * BASE RATE

Penalty **	ST	First and Second Shifts		Third Shift	
		OT	1½ OT	0-5 Hrs	6th Hr
None	3.06	4.59	6.885	5.51	8.265
10¢	3.16	4.74	7.11	5.66	8.49
20¢	3.26	4.89	7.335	5.81	8.715
30¢	3.36	5.04	7.56	5.96	8.94
45¢	3.51	5.265	7.90	6.185	9.28
80¢	3.86	5.79	8.685	6.71	10.065
85¢	3.91	5.865	8.80	6.785	10.18
\$1.20	4.26	6.39	9.585	7.31	10.965
Explosives	6.12	9.18	13.77	10.10	15.15

[87] WAGE SCHEDULE 1962-1963 * 15¢ SKILL

Penalty **	ST	First and Second Shifts		Third Shift	
		OT	1½ OT	0-5 Hrs	6th Hr
None	3.21	4.815	7.22	5.78	8.67
10¢	3.31	4.965	7.45	5.93	8.895
20¢	3.41	5.115	7.67	6.08	9.12
30¢	3.51	5.265	7.90	6.23	9.345
45¢	3.66	5.49	8.235	6.455	9.68
80¢	4.01	6.015	9.02	6.98	10.47
85¢	4.06	6.09	9.135	7.055	10.58
\$1.20	4.41	6.615	9.92	7.58	11.37
Explosives	6.27	9.405	14.11	10.37	15.555

* Effective 8:00 A.M. July 30, 1962—8:00 A.M. June 17, 1963

**Penalty Cargo List follows Wage Schedules

(Exh. 4, 88-89)

454a

Exhibit 4

[88] WAGE SCHEDULE 1962-1963* 20¢ SKILL

Penalty **	ST	First and Second Shifts			Third Shift	
		OT	1½ OT	0-5 Hrs	6th Hr	
None	3.26	4.89	7.335	5.87	8.805	
10¢	3.36	5.04	7.56	6.02	9.03	
20¢	3.46	5.19	7.785	6.17	9.255	
30¢	3.56	5.34	8.01	6.32	9.48	
45¢	3.71	5.565	8.35	6.545	9.82	
80¢	4.06	6.09	9.135	7.07	10.605	
85¢	4.11	6.165	9.25	7.145	10.72	
\$1.20	4.46	6.69	10.035	7.67	11.505	
Explosives	6.32	9.48	14.22	10.46	15.69	

[89] WAGE SCHEDULE 1962-1963* 25¢ SKILL

Penalty **	ST	First and Second Shifts			Third Shift	
		OT	1½ OT	0-5 Hrs	6th Hr	
None	3.31	4.965	7.45	5.96	8.94	
10¢	3.41	5.115	7.67	6.11	9.165	
20¢	3.51	5.265	7.90	6.26	9.39	
30¢	3.61	5.415	8.12	6.41	9.615	
45¢	3.76	5.64	8.46	6.635	9.95	
80¢	4.11	6.165	9.25	7.16	10.74	
85¢	4.16	6.24	9.36	7.235	10.85	
\$1.20	4.51	6.765	10.15	7.76	11.64	
Explosives ...	6.37	9.555	14.33	10.55	15.825	

* Effective 8:00 A.M. July 30, 1962—8:00 A.M. June 17, 1963

**Penalty Cargo List follows Wage Schedules

(Exh. 4, 90-91)

455a

Exhibit 4

[90] WAGE SCHEDULE 1962-1963* 30¢ SKILL

Penalty **	ST	First and Second Shifts		Third Shift	
		OT	1½ OT	0-5 Hrs	6th Hr
None	3.36	5.04	7.56	6.05	9.075
10¢	3.46	5.19	7.785	6.20	9.30
20¢	3.56	5.34	8.01	6.35	9.525
30¢	3.66	5.49	8.235	6.50	9.75
45¢	3.81	5.715	8.57	6.725	10.09
80¢	4.16	6.24	9.36	7.25	10.875
85¢	4.21	6.315	9.47	7.325	10.99
\$1.20	4.56	6.84	10.26	7.85	11.775
Explosives ...	6.42	9.63	14.445	10.64	15.96

[91] WAGE SCHEDULE 1962-1963* 40¢ SKILL

Penalty **	ST	First and Second Shifts		Third Shift	
		OT	1½ OT	0-5 Hrs	6th Hr
None	3.46	5.19	7.785	6.23	9.345
10¢	3.56	5.34	8.01	6.38	9.57
20¢	3.66	5.49	8.235	6.53	9.795
30¢	3.76	5.64	8.46	6.68	10.02
45¢	3.91	5.865	8.80	6.905	10.36
80¢	4.26	6.39	9.585	7.43	11.145
85¢	4.31	6.465	9.70	7.505	11.26
\$1.20	4.66	6.99	10.485	8.03	12.045
Explosives ...	6.52	9.78	14.67	10.82	16.23

* Effective 8:00 A.M. July 30, 1962—8:00 A.M. June 17, 1963

**Penalty Cargo List follows Wage Schedules

(Exh. 4, 92-93)

456a

Exhibit 4

[92] WAGE SCHEDULE 1963-1964* BASE RATE

Penalty **	ST	First and Second Shifts		Third Shift	
		OT	1½ OT	0-5 Hrs	6th Hr
None	3.19	4.785	7.18	5.74	8.61
10¢	3.29	4.935	7.40	5.89	8.835
20¢	3.39	5.085	7.63	6.04	9.06
30¢	3.49	5.235	7.85	6.19	9.285
45¢	3.64	5.46	8.19	6.415	9.62
80¢	3.99	5.985	8.98	6.94	10.41
85¢	4.04	6.06	9.09	7.015	10.52
\$1.20	4.39	6.585	9.88	7.54	11.31
Explosives	6.38	9.57	14.355	10.525	15.79

[93] WAGE SCHEDULE 1963-1964* 15¢ SKILL

Penalty **	ST	First and Second Shifts		Third Shift	
		OT	1½ OT	0-5 Hrs	6th Hr
None	3.34	5.01	7.515	6.01	9.015
10¢	3.44	5.16	7.74	6.16	9.24
20¢	3.54	5.31	7.965	6.31	9.465
30¢	3.64	5.46	8.19	6.46	9.69
45¢	3.79	5.685	8.53	6.685	10.03
80¢	4.14	6.21	9.315	7.21	10.815
85¢	4.19	6.285	9.43	7.285	10.93
\$1.20	4.45	6.81	10.215	7.81	11.715
Explosives	6.53	9.795	14.69	10.795	16.19

* Effective 8:00 A.M. July 30, 1962—8:00 A.M. June 17, 1963

**Penalty Cargo List follows Wage Schedules

(Exh. 94-95)

457a

Exhibit 4

[94] WAGE SCHEDULE 1963-1964* 20¢ SKILL

Penalty **	ST	First and Second Shifts		Third Shift	
		OT	1½ OT	0-5 Hrs	6th Hr
None	3.39	5.085	7.63	6.10	9.15
10¢	3.49	5.235	7.85	6.25	9.375
20¢	3.59	5.385	8.08	6.40	9.60
30¢	3.69	5.535	8.30	6.55	9.825
45¢	3.84	5.76	8.64	6.775	10.16
80¢	4.19	6.285	9.43	7.30	10.95
85¢	4.24	6.36	9.54	7.375	11.06
\$1.20	4.59	6.885	10.33	7.90	11.85
Explosives	6.58	9.87	14.805	10.885	16.33

[95] WAGE SCHEDULE 1963-1964 * 25¢ SKILL

Penalty **	ST	First and Second Shifts		Third Shift	
		OT	1½ OT	0-5 Hrs	6th Hr
None	3.44	5.16	7.74	6.19	9.285
10¢	3.54	5.31	7.965	6.34	9.51
20¢	3.64	5.46	8.19	6.49	9.735
30¢	3.74	5.61	8.415	6.64	9.96
45¢	3.89	5.835	8.75	6.865	10.30
80¢	4.24	6.36	9.54	7.39	11.085
85¢	4.29	6.435	9.65	7.465	11.20
\$1.20	4.64	6.96	10.44	7.99	11.985
Explosives	6.63	9.945	14.92	10.975	16.46

* Effective 8:00 A.M. July 30, 1962—8:00 A.M. June 17, 1963

**Penalty Cargo List follows Wage Schedules

(Exh. 4, 96-97)

458a

Exhibit 4

[96] WAGE SCHEDULE 1963-1964* 30¢ SKILL

None	3.49	5.235	7.85	6.28	9.42
10¢	3.59	5.385	8.08	6.43	9.645
20¢	3.69	5.535	8.30	6.58	9.87
30¢	3.79	5.685	8.53	6.73	10.095
45¢	3.94	5.91	8.865	6.955	10.43
80¢	4.29	6.435	9.65	7.48	11.22
85¢	4.34	6.51	9.765	7.555	11.33
\$1.20	4.69	7.035	10.55	8.08	12.12
Explosives	6.68	10.02	15.03	11.065	16.60

[97] WAGE SCHEDULE 1963-1964* 40¢ SKILL

Penalty **	ST	First and Second Shifts		Third Shift	
		OT	1½ OT	0-5 Hrs	6th Hr
None	3.59	5.385	8.08	6.46	9.69
10¢	3.69	5.535	8.30	6.61	9.915
20¢	3.79	5.685	8.53	6.76	10.14
30¢	3.89	5.835	8.75	6.91	10.365
45¢	4.04	6.06	9.09	7.135	10.70
80¢	4.39	6.585	9.88	7.66	11.49
85¢	4.44	6.66	9.99	7.735	11.60
\$1.20	4.79	7.185	10.78	8.26	12.39
Explosives	6.78	10.17	15.255	11.245	16.87

* Effective 8:00 A.M. July 30, 1962—8:00 A.M. June 17, 1963

**Penalty Cargo List follows Wage Schedules

(Exh. 4, 89-99)

459a

Exhibit 4

[98] WAGE SCHEDULE 1964-1965* BASE RATE

Penalty **	First and Second Shifts			Third Shift	
	ST	OT	1½ OT	0-5 Hrs	6th Hr
None	3.32	4.98	7.47	5.975	8.96
10¢	3.42	5.13	7.695	6.125	9.19
20¢	3.52	5.28	7.92	6.275	9.41
30¢	3.62	5.43	8.145	6.425	9.64
45¢	3.77	5.655	8.48	6.65	9.975
80¢	4.12	6.18	9.27	7.175	10.76
85¢	4.17	6.255	9.38	7.25	10.875
\$1.20	4.52	6.78	10.17	7.775	11.66
Explosives	6.64	9.96	14.94	10.955	16.43

[99] WAGE SCHEDULE 1964-1965* 15¢ SKILL

Penalty **	First and Second Shifts			Third Shift	
	ST	OT	1½ OT	0-5 Hrs	6th Hr
None	3.47	5.205	7.81	6.245	9.37
10¢	3.57	5.355	8.03	6.395	9.59
20¢	3.67	5.505	8.26	6.545	9.82
30¢	3.77	5.655	8.48	6.695	10.04
45¢	3.92	5.88	8.82	6.92	10.38
80¢	4.27	6.405	9.61	7.445	11.17
85¢	4.32	6.48	9.72	7.52	11.28
\$1.20	4.67	7.005	10.51	8.045	12.07
Explosives	6.79	10.185	15.28	11.225	16.84

* Effective 8:00 A.M. July 30, 1962—8:00 A.M. June 17, 1963

**Penalty Cargo List follows Wage Schedules

(Exh. 4, 100-101)

460a

Exhibit 4

[100] WAGE SCHEDULE 1964-1965* 20¢ SKILL

Penalty **	ST	First and Second Shifts		Third Shift 0-5 Hrs	Shift 6th Hr
		OT	1½ OT		
None	3.52	5.28	7.92	6.335	9.50
10¢	3.62	5.43	8.145	6.485	9.73
20¢	3.72	5.58	8.37	6.635	9.95
30¢	3.82	5.73	8.595	6.785	10.18
45¢	3.97	5.955	8.93	7.01	10.515
80¢	4.32	6.48	9.72	7.535	11.30
85¢	4.37	6.555	9.83	7.61	11.415
\$1.20	4.72	7.08	10.62	8.135	12.20
Explosives	6.84	10.26	15.39	11.315	16.97

[101] WAGE SCHEDULE 1964-1965* 25¢ SKILL

Penalty **	ST	First and Second Shifts		Third Shift 0-5 Hrs	Shift 6th Hr
		OT	1½ OT		
None	3.57	5.355	8.03	6.425	9.64
10¢	3.67	5.505	8.26	6.575	9.86
20¢	3.77	5.655	8.48	6.725	10.09
30¢	3.87	5.805	8.71	6.875	10.31
45¢	4.02	6.03	9.045	7.10	10.65
80¢	4.37	6.555	9.83	7.625	11.44
85¢	4.42	6.63	9.945	7.70	11.55
\$1.20	4.77	7.155	10.73	8.225	12.34
Explosives	6.89	10.335	15.50	11.405	17.11

* Effective 8:00 A.M. July 30, 1962—8:00 A.M. June 17, 1963

**Penalty Cargo List follows Wage Schedules

(Exh. 4, 102-103)

461a

Exhibit 4

[102] WAGE SCHEDULE 1964-1965* 30¢ SKILL

Penalty **	ST	First and Second Shifts		Third Shift	
		OT	1½ OT	0-5 Hrs	6th Hr
None	3.62	5.43	8.145	6.515	9.77
10¢	3.72	5.58	8.37	6.665	10.00
20¢	3.82	5.73	8.595	6.815	10.22
30¢	3.92	5.88	8.82	6.965	10.45
45¢	4.07	6.105	9.16	7.19	10.785
80¢	4.42	6.63	9.945	7.715	11.57
85¢	4.47	6.705	10.06	7.79	11.685
\$1.20	4.82	7.23	10.845	8.315	12.47
Explosives	6.94	10.41	15.615	11.495	17.24

[103] WAGE SCHEDULE 1964-1965* 40¢ SKILL

Penalty **	ST	First and Second Shifts		Third Shift	
		OT	1½ OT	0-5 Hrs	6th Hr
None	3.72	5.58	8.37	6.695	10.04
10¢	3.82	5.73	8.595	6.845	10.27
20¢	3.92	5.88	8.82	6.995	10.49
30¢	4.02	6.03	9.045	7.145	10.72
45¢	4.17	6.255	9.38	7.37	11.055
80¢	4.52	6.78	10.17	7.895	11.84
85¢	4.57	6.855	10.28	7.97	11.955
\$1.20	4.92	7.38	11.07	8.495	12.74
Explosives	7.04	10.56	15.84	11.675	17.51

* Effective 8:00 A.M. July 30, 1962—8:00 A.M. June 17, 1963

**Penalty Cargo List follows Wage Schedules

Exhibit 4

[104] PENALTY CARGO LIST

10¢ PENALTY

Following specified commodities in lots of 25 tons or more:

- | | |
|---|--|
| Alfalfa Meal. | Lumber, logs and lumber products loaded out of water. |
| Bones, untreated or offensive, in sacks. | Lumber, chemically treated, uncrated. |
| Borate (Razorite) when packed in cloth containers with no inner lining. | Lumber, freshly painted and paint is wet. |
| Calcine Coke. | Meat scraps, in sacks. |
| Caustic Soda in drums. | Nitrate, crude, untreated in sacks. |
| Celite and Decalite in sacks. | Ore, in sacks. |
| Coal in sacks. | [105] Phosphates, crude, untreated, in sacks (Not considered treated by the mere process of grinding). |
| Cement. | Pig Iron, rough piled, when hand handled. |
| Creosote when not crated. | Plaster, in sacks without inner containers. |
| Creosoted wood products unless boxed or crated. | Refrigerated Cargo: Handling and stowing refrigerator space: meats, fowl and other similar cargoes to be transported at temperatures of freezing or below in boxes.
(In lots 25 tons or more, or if job lasts one hour or |
| Fertilizers, following, in bags: | |
| Tankage, animal, fish, fish meal, guano, blood meal and bone meal. | |
| Glass, broken, in sacks. | |
| Green hides. | |
| Herring, in boxes and barrels. | |
| Iron blisters, molded, from Europe. | |
| Lime, in barrels and loose mesh sacks. | |
| Lime, dehydrated, in sacks. | |

Exhibit 4

more, penalty to apply on all time worked on refrigerator cargo.)

Rubber, Baled, Covered with Talc: To be paid to the gang actually handling this commodity including the deck men, front men, jitney driver and the dockmen working as part of the gang. If another gang is working in the same hatch on a non-penalty commodity, the ship gang members of said gang shall likewise be paid the penalty provided the holdmen of such gang are working the same deck or compart-

ment as the gang handling the baled rubber covered with talc.

Sacks: Loading only and to apply to the entire loading operation where table or chutes are used and the men are handling sacks weighing 120 pounds or over on the basis of one man per sack.

Salt blocks in sacks.

Scrap meal in bulk and bales excluding rails, plates, drums, car wheels and axles.

[106] Soda ash in bags

Sulphur, dehydrated, in sacks.

Cargoes leaking or sifting due to damage or faulty containers:

Cottonseed meal in sacks.

Analine dyes.

Bichromate of soda in sacks.

Fish oil, whale oil and Oriental oils in drums, barrels or cases.

Lamp Black.

Tapioca Flour.

Working in cramped space:

Holdmen only—All paper and pulp in packages weighing 300 pounds or over per package only

when winging up and when stowing in fore peaks, after peaks and special compartments

Exhibit 4

other than regular cargo spaces. (This does not apply to rolls.)

When there is less than six feet of headroom (a)

loading cargo in hold on top of bulk grain (b) covering logs or piling with lumber products; paid to siderunners when used.

20¢ PENALTY

Shoveling—All commodities except those earning higher rate.

Creosoted products out of water — Holdmen and boom men only.

[107] 30¢ PENALTY

Bulk Grain—Boardmen only. Bulk Phosphate Rock.

45¢ PENALTY

Bulk: Sulphur, Soda Ash, and Crude untreated Potash.

80¢ PENALTY

Bulk Bones, untreated or offensive.

85¢ PENALTY

Damaged cargo:

Cargo badly damaged by fire, collision, springing a leak or stranding, for that part of cargo only which is in a badly damaged or offensive condition.

Cargo damaged from causes other than those enumerated above, shall, if inspection warrants, pay the damaged cargo rate or such other rate deter-

(Exh. 4, 107-108)

465a

Exhibit 4

mined by the Port Labor Relations Committee for handling that part of the cargo only which is in a badly damaged or offensive condition. This provision shall apply only to

individual consignments which are damaged and shall not empower any committee to add to or detract from penalty cargo rates herein specified.

[108] \$1.20 PENALTY

Working hatch when fire burning or cargo smoldering in hatch.

EXPLOSIVES

When working Class A explosives as defined by Interstate Commerce Commission regulation (Topping's Manual) all men working in connection with

a ship which is loading explosives are to receive the penalty during such time as explosives are actually being worked.

* * *

Exhibit 5-A

[1] January 4, 1961

REPORT OF PMA COMMITTEE ON WORK IMPROVEMENT FUND CONTRIBUTIONS PROCEDURES

In General

This is the report and recommendation of the special PMA Committee appointed to study the appropriate method of dividing the costs of the ILWU Modernization and Improvement Fund set forth in the Memorandum of Agreement with the ILWU of October 18, 1960.

The amount to be raised is \$5,000,000 per year for each of the years 1961 through 1965 and \$2,500,000 for the period January 1, 1966, through June 30, 1966. The agreement with the Union leaves to the Association the method to be used in raising these amounts. In the negotiations it was made very clear to the Union that this question was to be a wholly internal PMA matter. The Committee recommends that the contributions to the Fund be raised on a cargo tonnage basis with an annual review by the Association to determine the equity of the formula as conditions change.

Methods of Contributions Considered

The Committee's principal deliberations centered on three methods of contribution—(1) contributions based on straight time man-hours of each employer; (2) contributions based on manifested cargo tonnage; (3) a combination of (1) and (2). These methods are discussed in detail below.

In addition to these methods of dividing the cost of the program, the Committee also discussed briefly several other methods which were finally discarded as not worthy of serious consideration. These included (a) raising part of

Exhibit 5-A

the Fund by a charge on a cargo tonnage moving in containers and (b) dividing the cost of the Fund by a contribution system based on specific [2] measurement of improvements in longshore productivity of each operator over a base year.

The first of these was felt to inhibit unnecessarily the development of this particular type of labor-saving operation and to penalize what is only one of many types of labor-saving techniques that are possible under the new agreement.

The productivity improvement measurement method has much to commend it. It is, at least at first blush, precise in placing the burden of the Fund on those benefiting from it. It was felt, however, that it would be a cumbersome and over-elaborate method of dividing the cost of the Fund and one that would be difficult to administer. Concern was expressed, for example, over the difficulty of determining the source of the productivity improvement and whether it could be attributed to the new agreement or whether it arose from an external factor such as a new terminal. One of the principal objections to such a plan was the view that the establishment of such a measurement system could lead to a renewal by the Union at the conclusion of the term of the present agreement of its demand for a share in the industry's productivity "savings." This was, in fact, the original demand of the Union when the negotiations which culminated in the Fund began. The Committee feels that PMA should avoid the establishment of an internal assessment system which is the very one the Union sought to impose on the industry and which, we are told, is still the position of several of the Union's influential leaders.

Exhibit 5-A

The Man-Hour versus the Cargo Tonnage Method

One of the principal methods proposed for the distribution of the cost of the Fund is one based on the number of hours of contract employment [3] given by each PMA employer. (It was assumed that these would be straight-time man-hours computed in the same manner as in the present PMA dues computation.) Most PMA funds, such as for pension, welfare and vacation benefits, are presently raised in this manner. To base the contributions on man-hours would, in effect, be to equate the Fund with wages. Some of the members of the Committee felt that the Fund was at least in part in payment for an agreement that would relieve all elements of the industry from contract work restrictions and should, therefore, be paid for on a wage basis since all operators can benefit from this aspect of the agreement.

The majority of the Committee, however, was of the view that the over-all intent of the agreement was to give the operators the freedom, each in its own way, to reduce the number of man-hours needed to load and discharge their cargo tonnage. They were struck by the inequity of a contribution formula based on man-hours which would provide for a decreasing percentage of the total contributions to the Fund by the operators which made greatest use of and received the greatest benefit from the new agreement. Thus, a hypothetical operator which could fully mechanize because of the freedom of operation permitted by the agreement would, if it eliminated all of its man-hours, pay nothing to the Fund that made its labor-saving possible. Even worse, such an operator would be substantially contributing to the loss of work opportunity of the ILWU work force. It is the fear of loss of work that has been the main impetus for the Union's insistence on obtaining this agreement and will undoubtedly be the principal ground for continuation or supplementation of

Exhibit 5-A

the Fund in future bargaining. Yet such an operator who would have aggravated the loss of work problem would make the least contribution to the Fund whose origin and existence is based on that problem.

[4] If all operators had an equal opportunity to make man-hour savings under the new agreement, there would be no serious objection to a man-hour method. Then it could be said that since each operator has an equal opportunity to shed man-hours and to reduce its share of the Fund contributions, it would have only itself to blame if it fell behind in the race to get rid of man-hours. But there is not an equality of opportunity for the inauguration of man-hour savings methods. Some steamship operators are engaged in trades where because of the types of cargo, multi-port operations or other operational problems involved, it is more difficult or less economically feasible to put into use labor-savings devices or techniques than in trades more suited to such methods.

It is argued, in favor of the man-hour approach, that the fact that an operator can reduce his share of the cost of the Fund by getting rid of man-hours makes such a method of contribution itself an important incentive to progress and efficiency in our industry. The Committee has taken the view, however, that the much larger savings of the cost of the man-hours themselves that are eliminated by taking advantage of the freedoms given by the new agreement are by all odds the prime incentive for labor-saving efforts and that the method of division of the cost of the Fund itself would not be a material influence. In short, the incentive factor that the method of contribution to the Fund represents is so minor that it should not interfere with the establishment of a contribution system that is equitable.

The elimination of both a man-hour formula and of a productivity improvement measurement method as bases

Exhibit 5-A

for Fund contributions leaves a formula based on cargo tonnage as the best remaining method of dividing the cost of the new agreement. This is the method the Committee recommends be adopted though admittedly it is a rough-and-ready way to divide the cost. [5] it lacks the precision of the productivity measurement method, for example. But it does divide the contribution on the basis of one form of measurement of volume of cargo-handling activity without being subject to the objectionable feature of the man-hour formula in which contributions are made in inverse proportion to realization of benefits from the new agreement.

The tonnage formula recommended by the majority of the Committee would be the same as the present tonnage formula used for the computation of a portion of the PMA dues. In this formula, bulk cargo tonnage is counted at one-fifth the value of general cargo tonnage. The tons are revenue tons—weight tons of 2,000 pounds, measurement tons of 40 cubic feet, and lumber at 1,000 board feet per ton. The cargo is that manifested for loading or discharging at Pacific Coast ports. Special rules apply to coastwise and transshipped cargo. The payments would be made by the employers of ILWU that is subject to the agreement.

Some Objectionable Features of the Tonnage Formula

There are some aspects of the tonnage formula that are objectionable. The majority of the Committee feels that these problems are less serious than those that would be created by adoption of the other alternative formulae, however.

Under a tonnage formula, all operators would be required to contribute to the cost of the new agreement. While it can be argued that this will force operators to contribute who expect to gain little advantage from the agreement, it is the view of the Committee that all operators should

Exhibit 5-A

contribute to the Fund on some basis because of the potential benefit that is available, in some degree at least, for all under the work restriction removal provisions of the agreement. Operators who expect to gain only small [6] benefit from the new agreement can, under the tonnage method, at least assure themselves that their contribution will not grow in future years as other more fortunately-situated operators begin eliminating substantial numbers of man-hours. The only alternative system that would meet the needs of such operators would be one measuring productivity. The objections to such a system have been discussed earlier in this report.

It has been suggested that adoption of the tonnage formula will create a poor precedent for future collective bargaining on mechanization and removal of work restrictions. It is true that the industry would not want a specified tonnage assessment permanently established by agreement with the Union as a charge on all future cargo tonnage. This would be an irrational and unconscionable arrangement that would build an ever-increasing fund as total Pacific Coast cargo tonnage increases through natural economic forces. But the formula the Committee is proposing is an internal one, not one agreed to with the Union, and, even more important, is one that raises an agreed sum of money for an agreed period of time. If any additional fund is to be raised after the conclusion of this agreement, both the amount and the duration of that arrangement will have to be negotiated. The fact that the present Fund would be raised internally by PMA on a tonnage basis is not felt by the majority of the Committee to be a sufficiently influential or dangerous precedent for such future bargaining as to warrant its abandonment. This is particularly true since the Union has never urged a tonnage formula as a means of paying for the Fund.

It should also be pointed out that a man-hour or combination man-hour tonnage formula, or any other formula

Exhibit 5-A

we might adopt, is equally subject to the same danger of being taken over some day by the Union. The assumption by [7] the Union at the end of the present agreement of a man-hour formula as the basis for the industry's payments to the Fund, together with a demand to pay an increased total dollar amount per year to the Fund (which might well be demanded if there were a dramatic reduction in man-hours in the industry in the next five years), would be a disaster to those operators who could not achieve substantial man-hour savings. The greater part of the burden of the expanded Fund would fall on them. If there is any risk of a "take-over" by the Union of the internal contribution formula we now adopt, it is the Committee's view that a formula using a man-hour basis would be the most dangerous from this standpoint of all. Only if the same dollar amount of contribution per man-hour were retained, could a Union "take-over" of the man-hour formula be relatively harmless and even then it would have the inherent inequity between members described previously.

Another problem created by a tonnage formula is that it fails to charge cargo-handling activities in terminal operations for the benefits those operations will receive under the new agreement. The Committee concluded, however, that virtually all of this cargo is cargo that has been taken from a vessel or is destined for loading to a vessel. (It is estimated that only a small fraction of 1% of the total Pacific Coast cargo tonnage handled by longshore labor has not come from a vessel or is not destined for a vessel.) Thus, in most instances a charge against this tonnage would be a needless duplication of the proposed charge on manifested tonnage with the ultimate cost falling on the steamship operator in any event. Though there may be some few inequities in special circumstances arising from the proposed plan, it must be recognized that even greater

Exhibit 5-A

inequities arise from the adoption of the alternative man-hour formula.

[8] The entire lump sum benefits portion of the new agreement has Federal income tax problems under the applicable regulations, whatever contribution formula we adopt. It may be, however, that these serious problems are somewhat aggravated by a tonnage formula instead of a man-hour formula. The elimination of the tonnage formula will not, of itself, cure the problem, however. It will be some time before these tax problems are resolved. The Committee believes that the contribution formula the Association wishes to adopt, whatever it may be, should be put into effect. If it later appears that the elimination of that formula will help solve these tax problems, the formula could be converted retroactively to another with little more than some staff computation work and some payments adjustments, provided counsel moves to resolve the tax issue before the end of 1961. The Committee, after discussion with counsel, does not consider this tax factor a controlling one.

The Combination Man-Hour and Tonnage Formula—

The final vote of the Committee was not between a tonnage and a man-hour formula but instead between a tonnage formula and one based on a combination of tonnage and man-hours. The most frequently discussed combination is that now employed for the determination of the on-shore portion of the PMA dues. (This is presently on an approximately 60% man-hour and 40% tonnage basis.) One of the principal arguments for this formula is that it would camouflage the method of contribution to the Fund so that it couldn't be pre-empted by the Union in future negotiations as the means of determining what the Union should get. It also contained a partial man-hour assessment to meet the demands of those who feel that at least that portion

Exhibit 5-A

of the new agreement covering removal of work restrictions should be paid for on a man-hour basis.

[9] The majority of the Committee rejected this type of formula, however, on the theory that since, as indicated above, the entire purpose of the new agreement was to gain freedom to eliminate man-hours, whether by containerization, removal of work restrictions or otherwise, a formula that even in part would reduce the contributions of those getting increased benefit from the plan would be, even to that extent, inequitable.

A report of a minority of the Committee urging adoption of this formula accompanies this report.

Annual Review—

In addition to the recommendation of the adoption of a tonnage formula made by the majority of the Committee, the entire Committee recommends an annual review by the Association of the contribution formula at the end of each of the calendar years in which the agreement is in effect. It is entirely possible that great changes in labor-saving techniques, tonnage and factors not foreseen at this time, could cause the recommended formula to work a hardship on segments of the industry. Such annual reviews could lead to amendment of the formula to prevent the continuation of any such inequities that may develop.

**COMMITTEE ON WORK IMPROVEMENT FUND
CONTRIBUTION PROCEDURES**

By PETER N. TEIGE,
Chairman

Exhibit 5-B

[1] STATEMENT OF MINORITY OPINION ON ILWU FUNDING

This statement summarizes the minority viewpoint of the sub-committee of the Coast Steering Committee charged with recommending methods for allocating among PMA member companies payments due under the ILWU modernization and improvement agreement.

Throughout the committee discussions the basic point in question was simply the relative merits of an allocation scheme based on tonnage handled versus one based on man-hours used. At the last meeting of the committee a vote was taken which resulted in a 4 to 2 majority in favor of the tonnage basis of payment allocation. It is the minority opinion that equitable allocation of payments among all member companies cannot be accomplished on the basis of either tonnage or man-hours alone and that instead a combination of these two measures is needed whereby part of the fund would be accumulated by tonnage assessments and part by man-hour assessments. As an integral part of this opinion it is further recommended that the funding be started in proportion 40% from tonnage and 60% from man-hours, and that every six months this proportionality be subject to formal PMA review to correct inequities that will become apparent as we gain experience and data on performance and cost changes under the new agreement.

In support of this minority recommendation the following points are offered for consideration by the PMA Coast Steering [2] Committee:

- (1) Funding on the basis of tonnage alone is in conflict with one of the basic agreed-on principles which guided negotiations for the modernization and improvement fund. This agreement recognized that there were many kinds of improvements available to the industry such as improved

Exhibit 5-B

docks, better terminal facilities, more effective supervision, better planning, improved ship designs, etc., which did not involve ILWU participation or concurrence and therefore did not incur any industry responsibility to the union. Largely for this reason the industry firmly rejected the union's proposal for a tonnage tax, pointing out that such a tax would contain an appreciable amount of un-earned tribute to the union and a significant penalty on management incentive. That we are now talking only about an intra-industry allocation scheme in no way changes the basic principle involved. Assessment on the basis of tonnage alone would still result in unfair discrimination against those management prerogatives that have no direct relationship to the objectives of the fund.

(2) Another guiding principle throughout the modernization and improvement negotiations was that mechanization and methods improvements could not be isolated from each other and their relative contributions to labor saving neatly measured. Nor could different companies adapt to or participate in specific innovations in any uniform way. For this reason the industry strongly resisted union pressures to [3] categorize specific improvement opportunities and instead insisted on a general buy-out of restrictive practices consistent with safe and humane working conditions. With this general approach it was agreed that all PMA members would have ample opportunity to share in some degree the benefits to be derived from the fund. In particular it is clear that all users of ILWU labor have something to gain from the elimination of restrictive work practices, whereas the opportunities for outright mechanization can be expected to vary widely from company to company. Assessment on either a pure tonnage or a pure man-hour basis would ignore these basic facts. For example there are many users and uses of ILWU man-hours that would not be covered under the tonnage reports to PMA

Exhibit 5-B

which include only tons handled into and out of a port by member companies on a one-time basis. Thus the appreciable fraction of long-shore labor used in terminal and dock work or in cargo re-handling for operators' convenience would be participating in the fund free of cost to the employers of this labor. Under the tonnage assessment this cost would have to be spread over those employers reporting PMA tonnages, rather than be borne by the direct employer who has the most immediate opportunity to benefit from the improvements the fund is paying for. Similarly, an all-manhour assessment would ignore differences in labor-saving opportunity, but since no one is recommending this form of assessment it need not be discussed [4] further here. The point is that a combination tonnage-manhour assessment avoids the inequities of either one alone and in addition conforms to the original intent in the negotiations.

(3) Inherent in the funding agreement itself is an argument favoring the combination tonnage-manhour assessment. By specific agreement with the union the total fund will be accumulated in two separate and distinct parts: one at a rate of \$2,000,000 per year to cover the guaranteed wage portion of the contract, and one at a rate of \$3,000,000 per year to cover death and disability and supplemental retirement benefits. Since the first of these is insurance against a too-rapid loss in work opportunity, it is inconceivable that those companies who are most successful in reducing their labor requirements should contribute in decreasing proportion to the cost of this insurance. Clearly this is a case where the man-hour assessment would be inequitable and the tonnage assessment appropriate. On the other hand, the benefits portion of the total fund is to take care of career longshoremen as they drop out of the workforce at or near the normal rate of attrition. These men have been in the workforce because of the demands or tolerance of everyone employing ILWU labor and they are

Exhibit 5-B

therefore the responsibility of all companies who have been employing this labor in the past whether or not this employment can be directly related to incoming or outgoing cargo [5] on ships. For this portion of the fund then it seems clear that a man-hour assessment would be appropriate and equitable. This reasoning leads to the 40-60 ratio for tons and man-hours mentioned in the minority recommendation.

(4) On the matter of judging the equity of a tonnage versus a combination tonnage-manhour assessment it is unfortunately true that adequate data do not exist for a direct comparison of the two schemes. For this reason it is considered ill-advised to move to an entirely new assessment scheme until we have gained some operating experience under the new contract. The present assessment scheme for support of PMA operations has for some time corresponded roughly to the combined tonnage-manhour ratio developed in paragraph 3 above and since no great inequities have become apparent under its use it seems reasonable to expect that a continuation of this formula for a trial period would not create any undue hardships. It is not the minority contention that this should necessarily be the ultimate formula but only that it is a workable one until equitable adjustments can be made in the light of more quantitative knowledge of the issues involved.

(5) Initial use of the present PMA assessment formula has some significant minor advantages that should not be overlooked. In the first place the necessary reporting scheme already exists and is operating. A shift to an all-tonnage assessment would create a number of troublesome [6] problems that cannot be evaluated at this time. For example, in the case of non-member companies, the union now sees that man-hour assessments are paid to PMA. No such arrangement exists for administering a tonnage collection. Presumably one could be developed but it would set the

(Exh. 5-B, 6; Exh. 6, 1)
479a

Exhibit 6

dangerous precedent of placing a tonnage tax in union hands—the very thing we have told them we could not and would not do.

(6) There are troublesome legal questions relating to the funding of benefits on a tonnage basis. There is no precedent for such funding and this is certain to create questions within Internal Revenue Service regarding the deductability of such contributions for tax purposes. Even if these questions can be ironed out it is likely that such contributions would have to be paid through stevedoring companies rather than directly to PMA.

1/4/61

Exhibit 6

[1] PACIFIC MARITIME ASSOCIATION
16 California Street
Phone DOuglas 2-7973
San Francisco 11, Cal.

January 11, 1961

To MEMBERS.

At the Membership Meeting on Tuesday, January 10, 1961, duly called by notice dated January 5, 1961, a vote was taken on the method to be used for contributions to the ILWU-PMA Modernization and Improvement Fund.

The action taken by the Membership was as follows:

"It was regularly moved and seconded that the majority recommendation of the Committee appointed to propose a method for collection of the Fund, calling for a tonnage formula with bulk cargoes at one-fifth the general cargo rate, be adopted, with

Exhibit 6

the understanding that the method of collection will receive continued study and be presented to the Membership again in six months."

A secret ballot was taken and the vote was polled as follows:

246—Yes

74—No

21—Withheld

67—Absent

Motion carried by a majority of the total voting strength of the Association Membership.

[2] A vote was also taken on the recommendation of the Board of Directors that the Agreement dated October 18, 1960, between the ILWU and PMA be ratified. This motion carried unanimously.

The Treasurer will notify you as to the contribution rates and effective date.

We call your attention to Section 3, Article XI of the Association's By-Laws, reading as follows:

"A member who has not authorized or accepted in writing such contract, commitment or undertaking and who has not voted in favor of the approval thereof or the delegation of authority with respect to the particular terms thereof shall not be bound by such contract, commitment or undertaking, if such member resigns within seven (7) days after the date of the vote thereon, whether taken in advance of or during the negotiations, or subsequent to the drafting of the contract, agreement or commitment in final form and submission to the membership for approval."

J. A. ROBERTSON,
Secretary.

JAR:ah

(Exh. 7, 1)

481a

Exhibit 7

[1] WINCHESTER AGENCIES, INC.
Steamship Agents and Brokers
351 California Street
San Francisco 4, Calif.

January 17, 1961

Pacific Maritime Association
16 California Street
San Francisco, California

Attention: Mr. Paul St. Sure

Re: Volkswagen Importations
PMA Special Tonnage Assessment

Gentlemen:

We understand that to finance a mechanization and improvement fund as recently agreed with the ILWU, the Pacific Maritime Association had adopted a special tonnage assessment of 27.5 cents per ton on general cargo and 5.5 cents per ton on bulk cargo. We are informed that the PMA proposes to levy this assessment per ton weight or measurement as manifested and reported to the PMA during 1959.

We are under instructions from our principals, Messrs. Volkswagenwerk, A. G. Shipping Department, Wolfsburg/Hanover, West Germany, to protest the application by Pacific Maritime Association of an assessment on a measurement basis against the discharge of unboxed automobiles. Our principals and we share with the PMA the hope that the recently concluded agreement with the ILWU will result in improvements of cargo-handling efficiencies and lowering of the net costs thereof on the Pacific Coast. On the other hand, we can only conclude that the Directors of your Association were not aware of the discriminatory burden

Exhibit 7

which a measurement ton basis of this special tonnage assessment would impose on the discharge of unboxed automobiles, viz:

On the premise that \$12.50 per revenue ton is the current average discharge cost of *packaged general cargo*, a tonnage assessment of 27.5 cents per ton W/M represents an approximately 2.2% increase in cargo-handling expenses. On the other hand, a measurement assessment of 27.5 cents per 40 cubic feet on typical shipments of *unboxed Volkswagen autos* represents an increase of more than 26% in the discharge costs of this commodity.

[2] Illustration—Assuming shipment 50% VW sedans and 50% VW transporters with current discharge costs \$10.45 per auto:

	<i>Sedan</i>	<i>Transporter</i>	<i>Average</i>
Typical weight	1609 lbs.	2447 lbs.	2028 lbs.
“ measurement	8.3 tons	11.8 tons	10.0 tons
Assessment 27.5 cents per ton equals assess- ment per auto basis weight ton 2000#	\$0.22	\$0.336	\$0.278
Equivalent increased costs	2.1%	3.2%	2.7%
Basis measurement ton 40 cft.	\$2.28	\$3.245	\$2.76
Equivalent increased costs	21.8%	31.0%	26.4%

In view of the foregoing, it is requested that the Pacific Maritime Association reconsider the basis of the proposed tonnage assessment on the importation of unboxed foreign automobiles. We shall hold ourselves in readiness to discuss this matter in further detail with your Directors if

(Exh. 7, 2-3)

483a

Exhibit 7

you so desire. In the meantime, may we offer the following additional comments:

1. Most of the Volkswagen movements to this Coast are effected in full cargo shipments in vessels under charter by Volkswagenwerk, A.G. Such vessels include timecharter or lumpsum FIO charters. Under timecharter, the auto manufacturer pays for the use of the vessel at a fixed rate per interval of time. Under the FIO charters, the freight is expressed as a lumpsum for a specific voyage. The time-charter hire or the lumpsum FIO freight gives to the charterer the exclusive use of the vessel and is payable to the shipowner irrespective of the number of automobiles actually aboard. The manifest and bills of lading covering such charter-ship movements reflect the number of autos and the weight in kilos. Because the freight is covered by timecharter hire or lumpsum FIO freight for the use of the entire vessel, the manifest and bills of lading do not reflect any specific rate or total freight, such being covered by the notation "freight prepaid" or "freight as agreed."
2. In the Europe to Pacific Coast run the volume of cargo is rarely sufficient to fully utilize either the available deadweight or cubic of the Liners in this trade. Accordingly, cubic alone is not the criterion in establishing freight rates on those Volkswagen units which are lifted by the Liners to the Pacific Coast, and the contracts of affreightment between Volkswagenwerk, A.G. and the Liner companies involved are predicated on a lumpsum freight rate per auto.
3. The practical insignificance of the actual measurement of unboxed VW autos is emphasized by the fact that the stevedoring rates for discharging the vessels chartered by Messrs. Volkswagenwerk, A.G. work out to [3] the same

Exhibit 7

unit-equivalent irrespective of whether it is a sedan model (1609 lbs. and 333 cu. ft) or a transporter (average 2447 lbs. and 472 cu. ft.). Obviously, the automobile manufacturer in Europe has had no control over the method of reporting to the PMA by the stevedore companies on this Coast.

4. How a commodity is "manifested" or "freighted" is not necessarily an equitable criterion on which to base a tonnage assessment. For example, the Intercoastal ocean freight rate structure is all keyed to a weight basis; accordingly, if the basis of "manifesting" were the sole key to the reporting and levying of a tonnage assessment, any automobiles in that trade would be assessed on a unit of 2000 lbs.

5. The California State wharfage on unboxed automobiles is based on a weight ton of 2000 pounds.

6. As illustrated above, application of a measurement ton assessment against unboxed automobiles would impose upon the importation of this commodity a contribution to the "mechanization and improvement fund" at a level 10 to 15 times greater than the like contribution with packaged general cargo. This distortion is further magnified by the expectation that some overall net savings may be effected through the mechanized handling of packaged general cargo, whereas at this juncture we do not visualize any practical application of mechanization to the discharge of unboxed autos.

Your Directors must surely be aware of the diminishing sales in this country of most foreign autos—with the exception of Volkswagens. The ability of our principals to maintain competitive standing with the American manufacturers of "compact cars" is largely contingent upon holding down costs of production and delivery. The threat

(Exh. 7, 3)

485a

Exhibit 7

alone by PMA to attempt imposition of a 21% to 31% cargo-handling levy against the importation of Volkswagen autos injects a damaging instability to the sales potential of our principals, the extent of which damages can be measured by the current volume of Volkswagen imports to this Coast (approximately 30,000 units per year) and the long-term freighting contracts to which our principals are committed.

In conclusion, we are compelled to request immediate action by the Pacific Maritime Association to remove the threat of tonnage assessment on a measurement basis against the importation of unboxed foreign automobiles. Failing timely and affirmative action by your Association, we shall have no recourse but to seek legal order to remove this overwhelming discrimination which is implicit in an attempted levy at a level 10 to 15 times greater than assessed on other general cargo. Furthermore, you may expect legal action against the Pacific Maritime Association for recovery of damages, suffered by Volkswagenwerk, A.G. and the distributors of these autos on the Pacific Coast, resulting from such restraint of trade.

Very truly yours,

WINCHESTER AGENCIES, INC.—As Agents

/s/ PETER CURTIS

Peter Curtis, Vice President

cc: Volkswagenwerk, A.G.
Shipping Department
Wolfsburg/Hanover, West Germany

(Exh. 9, 1)

486a

Exhibit 9

[1] MARINE TERMINALS CORPORATION

Cable Address "Marineterm"

Contracting Stevedores & Terminal Operators

March 1, 1961

Mr. K. F. Saysette, Vice President & Treasurer
Pacific Maritime Association
16 California Street
San Francisco, California

Mechanization & Modernization
Fund Collections

Dear Mr. Saysette:

We have been informed by Winchester Agencies, Inc., agents for Messrs. Volkswagenwerk, A. G. and by Waterman Corporation of California, agents for Walleniusrederierna, that they are refusing payment of the newly adopted Mechanization and Modernization Fund based on the measurement of automobiles discharged.

Upon instructions from the principals' offices in Wolfsburg, Germany, and Stockholm, Sweden, they were advised that they feel that the placement of this assessment on a measurement basis is unjust and it increases the cost of handling by some 35%.

We have informed them that we at Marine Terminals Corporation are merely following out the instructions set forth by the Board of Directors of the Pacific Maritime Association and therefore are considered only a collection agency in this matter.

They also have instructed their agents that if our rates are renegotiated and the assessment is placed in the rate, they will continue to deduct the 27½¢ per measurement ton.

(Exh. 9, 1; Exh. 10, 1)

487a

Exhibit 10

We find ourselves in a very awkward position and wish to be advised of the committee's decision on how automobiles will be assessed and what stand we can take in demanding payment of this assessment.

Very truly yours,

Ellett G. Horsman,
ELLETT G. HORSMAN,
Vice President.

EGH:mb

Exhibit 10

[1] March 3, 1961

Mr. J. Paul St. Sure
Pacific Maritime Association
16 California Street
San Francisco 11, California

Dear Paul:

The Committee on Work Improvement Fund Contributions Procedures has considered the communications enclosed with your letter of January 24, 1961, and similar letters subsequently forwarded to the Committee. The gist of these letters is that the Work Improvement Fund assessment, as presently constituted, is burdensome to the traffic concerned. The traffic asking special consideration is: Volkswagen and other foreign car imports, bulk rice in containers, bananas, Army conexes, and coastwise cargo including lumber. After careful consideration of each of these protests, the Committee recommends that, with the exception of Army conexes and coastwise cargo, there be no change in the present method of fund assessments.

Exhibit 10

The arguments advanced by the companies complaining of the assessment can be generally summarized as claiming that the assessment cost for a particular commodity is high in comparison with the longshore labor cost for that commodity. Thus, the foreign car import people point out that by basing the assessment on these vehicles on measurement tons the assessment substantially increases their labor costs. This results from the low labor content in the discharging operation for such vehicles. Similarly, the banana operators claim that bananas are nearly like bulk cargo and should not be charged a full general cargo assessment. In both instances, however, further labor saving is possible. It must also be recognized that each general cargo operator could go through its list of commodities and find some which are handled by an operation with a high labor content per ton and others with a low labor cost. The Committee feels that save for the traditional exception of bulk cargoes, there should be no special adjustment of the tonnage assessment by commodity. If the assessment rate were adjusted for one claim of this type, then consideration would have to be given to all similar claims, and the present general assessment would be in danger of being made into an assessment rate structure similar to a tariff, with all of the problems attendant thereon. For these reasons, the Committee feels that claims of this nature should be rejected. However, it also is of the view that claims based on inequities between operators who are handling the same or similar cargo in a similar manner should be explored for the possible need for adjustments to equalize the positions of such operators.

[2] In the matter of Army conexes, it is the contention of the interested parties that, because of the non-commercial cargo manifesting practices used by the military, empty conexes are assessed at the measurement ton capacity of the conex, whereas empty commercial containers owned by

(Exh. 10, 2)

489a

Exhibit 10

the carriers are not manifested and not assessed. Similarly, Army conexes containing cargo are manifested and therefore presently assessed at the full measurement ton capacity of the conex instead of on the manifested measurement (or weight, as the case may be) basis of the cargo therein contained, as is the practice with commercial operators handling containers. It is the opinion of this Committee that Army conexes should be assessed in the same manner as commercial containers moving in the trade in question.

The Army also has questioned the use of measurement tons in assessing vehicles. Since commercial operators are being assessed on a measurement basis, we believe this complaint has no merit. In short, the Committee wants all military cargo assessed on the same basis as commercial cargo moving in the trade in question.

The Isbrandtsen Company request is a little less easy to categorize. Until fairly recently rice has been handled entirely in bags. Now some 60% of Bay Area rice for Puerto Rico is going in bulk in a specially-built vessel. In order to keep some of the remaining business, Isbrandtsen plans to carry rice in bulk in 10-ton containers with the containers being filled at the shipper's place of business. A freight rate based on rice in bags would be charged. They request a bulk instead of general cargo assessment on this movement. It is the view of the Committee that a container movement should be treated as a general cargo, not a bulk cargo movement, whatever the contents of the container. This operator apparently has the choice of handling this cargo under present circumstances only in bags or containers since it has withdrawn a tariff rate based on bulk carriage that it had filed with the Federal Maritime Board. Either rice in bags or containers requires the general cargo assessment. The Committee is of the view that no exception should be made in this case in order to

Exhibit 10

make the operator competitive with another method of operation (bulk loading). It is not the function of the assessment to equalize competition. The Committee feels that any commodity which could be handled as bulk cargo but is instead handled in a container or package must be treated as general cargo for purposes of this assessment. This is particularly true where the movement is in containers, an operation that was a key factor in causing this Fund to exist.

The matter of the coastwise trade is a particularly difficult one. The argument is that in this trade the same ton of cargo is assessed twice, once when it is loaded onto a vessel and again when it is loaded off of the vessel. It is also a very marginal business economically.

[3] The industry has traditionally recognized the problems of the coastwise industry when it has assessed the dues collected by the Association that are based on tonnage by charging cargo only once for the assessment. Though it is not entirely a logical distinction because of the double opportunity for labor saving in such an operation, it is the recommendation of the Committee that coastwise cargo be assessed in the traditional manner at a rate of one-half of the Work Improvement Fund rate for offshore and inter-coastal cargo. That is to say, a single ton of coastwise cargo would pay a total of $27\frac{1}{2}$ ¢ Work Improvement Fund assessment, one-half at the point of loading and the other half at the point of discharge.

A minority of the Committee is of the view that a full assessment should be made on both coastwise loading and discharging. It took the view that the problems of the coastwise trade do not arise from the manner of dividing the cost of this Fund but from the economic weakness of the industry resulting from years of land carrier competition and high operating costs and that there is no logical

Exhibit 10

basis for excluding this traffic from paying its share of the cost of this Fund.

One of the coastwise operators that has protested the Fund contribution rate is W. R. Chamberlin and Company. They have, in addition to the double assessment problem, also called attention to the penalty rate of \$1.00 straight time charge, the so-called Class B Steam Schooner rate arising from the use of seamen for cargo operations. We believe to the extent that that penalty rate is paid for work flexibility and not for allowing another union to perform longshore work, this is an other reason for the coastwise half-rate rule.

The Committee also voted to have transshipped cargo assessed both for the discharge from the first carrier and the loading into the vessel of the connecting carrier.

The recommendation of this Committee concerning coastwise cargo will answer, insofar as is possible, the letter from Oliver J. Olson and Company. However, Mr. Saysette has given to this Committee another letter concerning the Olson Company, in which the PMA Southern California Area Manager has pointed out that the Olson Company has a direct contract with the ILWU for their stevedoring operations, and that other companies are competitively concerned whether Olson is also paying the Work Improvement Fund assessment. This raises a basic problem resulting from the lump sum settlement made by PMA with the ILWU. It is obviously important that employers or operators dissatisfied with the assessment not be permitted to avoid the assessment by resigning. Furthermore, it is essential that non-members be required to pay a similar assessment for competitive reasons. For these reasons we must ask the Union for its assurance that the [4] same assessment will be applied to non-member users of longshore labor. The Committee also urges that an effort be made to have non-members join PMA and pay the assess-

(Exh. 10, 4; Exh. 11, 1)

492a

Exhibit 11

ment to PMA instead of directly to the Union since this will have the effect of reducing the assessment for all, including the new member, in view of the lump sum nature of our settlement.

For the
COMMITTEE ON WORK IMPROVEMENT
FUND CONTRIBUTIONS PROCEDURES
PETER N. TEIGE,
Chairman.

PNT:jg

Exhibit 11

[1] PACIFIC MARITIME ASSOCIATION
Southern California Area
750 Broad Avenue
Wilmington, California

March 24, 1961

Mr. K. F. Sayette
Pacific Maritime Association
16 California Street
San Francisco 11, California

Subject: Mechanization Assessment—
Refusal to Pay

Dear Ken:

Captain Anthony of Associated-Banning Company called me in an extremely disturbed state this afternoon and discussed the attached correspondence with me. I indicated there was little I could do about it at this level, and suggested he supply me with copies of the letter for forwarding to you.

(Exh. 11, 1; Exh. 12, 1)
493a

Exhibit 12

Banning is very much concerned inasmuch as approximately \$1,500 is involved in back assessments and the status of future jobs is certainly clouded.

Could you give this your prompt attention and advise me if anything further should be done at this level.

Very truly yours,

J. D. MacEvoy,
J. D. MacEvoy,
Area Manager.

JDM:ae
Attachment

Exhibit 12

[1] WATERMAN CORPORATION OF CALIFORNIA
Steamship Agents
Seattle - Portland - San Francisco - Los Angeles
P. O. Box 667
Wilmington, California

March 23, 1961

Associated Banning Co.
P. O. Box 816
Wilmington, Calif.

Attention: Mr. J. H. Anthony

Re: Mechanization & Modernization
Assessments on Automobiles

Gentlemen:

Reference to your bills number 2-116, 2-117 and 2-118, covering rebilling of automobiles tonnage from a weight basis to a measurement basis are being returned herewith.

(Exh. 12, 1-2)

494a

Exhibit 12

The position of this company, who are Agents for the Wallenius Line which carries as part of their cargo considerable numbers of automobiles is that, we complied with rules set down by the Pacific Maritime Association Bulletin No. 4 dated January 17, 1961.

Paragraph one (1) of this bulletin stated that cargo shall be reported at 27½ cents per ton as manifested. Each automobile carried on the Wallenius Line is considered as one (1) unit, and further to substantiate this in our contract with you, each automobile is considered as one unit and/or one (1) ton. Further we refer to paragraph six (6) of this same bulletin stating in part, tonnage declaration made by companies are to be the same as during the year 1959. This reporting of automobiles as one (1) unit, and/or one (1) ton was thusly reported in this manner in 1959.

Do to the above, we are requesting that you report to the Pacific Maritime Association Mechanization Modernization Fund exactly as was done in 1959.

[2] We trust that the above clarifies our position in relation to the reporting of automobile assessments.

Very truly yours,

WATERMAN CORP. OF CALIFORNIA
AGENTS FOR WALLENIUS LINE

H. J. Murphy,
H. J. MURPHY,
Operating Manager.

HJM/vc

(Exh. 13, 1)

495a

Exhibit 13

[1] MARINE TERMINALS CORPORATION

Cable Address "Marineterm"

Contracting Stevedores & Terminal Operators

May 1, 1961

Mr. K. F. Sayette, Vice President & Treasurer
Pacific Maritime Association,
16 California Street
San Francisco 11, California

Mechanization & Improvement Fund

Dear Mr. Sayette:

Receipt is acknowledged of your letter dated April 28th demanding payment for the Mechanization & Improvement Fund contributions on foreign cars handled by this company from the inception of the plan.

In discussing the subject on the telephone, you explained that the Pacific Maritime Association was aware of what was behind our not making certain payments into the plan, but nevertheless, you had to protect yourself by writing the letters referred to above.

Mr. Ernst has this date again confirmed that the Pacific Maritime Association requested Marine Terminals Corporation not to file a suit against our principals for non payment until such time as a collective bargaining agreement is signed by the I.L.W.U. which would obligate Marine Terminals Corporation to pay the assessment. It is our understanding that without such an agreement we would stand a good chance of losing the case and jeopardizing the entire program.

Under the circumstances, Marine Terminals Corporation agreed not to file suit providing the Pacific Maritime Asso-

(Exh. 13, 1; Exh. 14, 1)

496a

Exhibit 14

ciation did not press Marine Terminals Corporation for payment on the disputed portion of the Mechanization and Improvement Fund payments on foreign cars.

Please confirm that the above is your understanding of the situation.

Very truly yours,

MARINE TERMINALS CORPORATION,

C. R. Redlich,
C. R. REDLICH,
Vice President.

CRR:mb

Exhibit 14

[1] MARINE TERMINALS CORPORATION
OF LOS ANGELES

CONTRACTING STEVEDORES AND TERMINAL OPERATORS

P. O. Box 1068
Long Beach, California
HEmlock 2-5904
May 1, 1961

Mr. K. F. Saysette, Vice President & Treasurer
Pacific Maritime Association
16 California Street
San Francisco 11, California

Mechanization & Improvement Fund

Dear Mr. Saysette:

Receipt is acknowledged of your letter dated April 28th demanding payment for the Mechanization & Improvement Fund contributions on foreign cars handled by this company from the inception of the plan.

(Exh. 14, 1)

497a

Exhibit 14

In discussing the subject on the telephone, you explained that the Pacific Maritime Association was aware of what was behind our not making certain payments into the plan, but nevertheless, you had to protect yourself by writing the letters referred to above.

Mr. Ernst has this date again confirmed that the Pacific Maritime Association requested Marine Terminals Corporation not to file a suit against our principals for non payment until such time as a collective bargaining agreement is signed by the I. L. W. U. which would obligate Marine Terminals Corporation to pay the assessment. It is our understanding that without such an agreement we would stand a good chance of losing the case and jeopardizing the entire program.

Under the circumstances, Marine Terminals Corporation agreed not to file suit providing the Pacific Maritime Association did not press Marine Terminals Corporation for payment on the disputed portion of the Mechanization & Improvement Fund payments on foreign cars.

Please confirm that the above is your understanding of the situation.

Very truly yours,

MARINE TERMINALS CORPORATION
(of Los Angeles)

/s/ C. R. REDLICH
C. R. Redlich
President

CRR;mb
cc: J. D. MacEvoy
C. W. Cartmel

Exhibit 20

[1] (MINUTES OF COMMITTEE ON WORK IMPROVEMENT FUND CONTRIBUTION PROCEDURES, AUGUST 1, 1961)

A meeting of the Committee was held on August 1, 1961, in Room 201 of the Association Offices.

Those present were:

Committee Members:

Messrs. Peter N. Teige—American President Lines,
Ltd.

Ian Back—Union Steamship Co. of N. Z.
O. I. M. Porton—Holland America Line
Hubert Brown—Pacific Far East Line, Inc.
B. M. Frochen—States Steamship Co.
Foster Weldon—Matson Navigation Co.

Staff Present:

Mr. K. F. Sayette

Committee Members Absent:

Messrs. L. R. Richards—Overseas Shipping Co.
W. B. Adams—Pope & Talbot, Inc.

The meeting convened at 10:00 A.M.

St. Sure Letter to Committee of July 17, 1961:

The Committee took up Mr. St. Sure's letter to the Chairman of the Committee dated July 17, 1961.

The first matter discussed was Item 3 of the letter that asked that the Committee investigate and make recommendations with regard to the refusal of certain members to pay the M & I Fund assessment. After a discussion of

(Exh. 20, 1-2)

499a

Exhibit 20

the extent of the problem, the Committee recommended that the following action be taken:

1. That the PMA staff prepare a detailed report showing:
 - (a) The name of delinquent employers;
 - (b) The amount delinquent over thirty days; and
 - (c) Remarks concerning the reason for delinquency.

It was urged that the report be prepared promptly so that the Committee and the Board could know precisely the extent of the delinquency problem.

- [2] 2. That the Board of Directors inaugurate a new policy whereby:

- (a) Amounts due the M & I Fund which have not been paid after thirty days from the end of the month in which they accrued shall at that time be deemed delinquent and such employers shall be charged a penalty on the amount delinquent at the rate of one per cent per month, or any portion of a month, commencing at the date of delinquency;
- (b) A report showing the names of delinquent employers and the amount of delinquency would be distributed to the membership if the employer has amounts still delinquent thirty days after the date of original delinquency.

The Committee considered Item 4 of Mr. St. Sure's July 17 letter which asked the Committee's advice on the employment of certified public accountants to check tonnage declarations made in connection with the Fund assessment. Mr. Saysette reported that Price Waterhouse & Co. esti-

Exhibit 20

mated they could check an average employer for about \$300. The Committee agreed to recommend to the Board of Directors that Price Waterhouse & Co. conduct a spot-check of tonnage declarations by investigating the declarations of approximately fifteen employers a year, subject to holding the total expenditure for the year to \$5,000 or less. Since the assessment program is a new one, it might be well to have the spot-checks for this year made as soon as possible.

Discussion of the inquiry in Mr. St. Sure's letter concerning a request for use by a non-member of the Central Records Office was postponed to a subsequent meeting since it is involved in the larger non-member problem confronting the Committee.

[3] Volkswagen Assessment:

Mr. Saysette reported on the continuing complaints of contractors who have handled Volkswagen and other foreign car shipments with respect to the application of the Fund assessment to such shipments and their failure to pay assessments on same. The Committee recommended that Mr. Saysette take up with Mr. Ernst the question of whether the assessment of automobiles on a measurement basis, though freighted on a unit basis, is legally appropriate.

MILITARY CARGO ASSESSMENTS:

The Committee next discussed the decision it had made earlier with respect to assessments on employers handling military cargo and particularly the Committee's decision with respect to a formula for conex containers, reflected in Mr. Saysette's letter to the Commanding General, U. S. Army Transportation Terminal Command, Pacific, of June 5, 1961. The Committee recommended that the military assessment principles which it had recommended be for-

Exhibit 20

mally approved and ratified by the Board of Directors, including the formula proposed with respect to measurement of conex cargo.

The Committee also dealt with the occasional military shipment moving over the terminals of steamship operators and recommended to Mr. Saysette that, after the above-recommended Board action on the military cargo formula has been taken, a PMA directive be issued to the U.S.-flag lines handling military cargo, explaining that conexes moving over their terminals would be assessed according to the formula described in Mr. Saysette's June 5 letter.

[4] ADEQUACY OF PRESENT LEVEL ASSESSMENT:

The Committee then asked Mr. Saysette to report on the adequacy of the present assessment. He stated that as of June 30 the Fund appeared to be some \$500,000 behind for the year 1961 based on tonnages handled to June 30th, but that there is usually a greater amount of cargo handled in the last months of the year and it was hoped that this \$500,000 deficit would be largely made up. After a full discussion of this subject, it was recommended that the PMA staff establish a permanent system for periodic forecasting of the adequacy of the Fund assessments. This would involve analyzing past tonnage patterns, studying past errors in tonnage predictions, checking with operators to determine their short-range future tonnage expectations and the like. In this manner the assessment for each six months' period could be more nearly appropriate to the tonnage handled in that period, thereby avoiding the discrimination that would arise by requiring substantial increases in assessments in order to make up past deficits.

NON-MEMBER AND ASSESSMENT ESCAPE PROBLEM:

The Committee had, at its previous meeting, considered (1) the problem of obtaining assessment support for the

(Exh. 20, 4-5; Exh. 21, 1)

502a

Exhibit 21

Fund from non-members and (2) whether there are any significant users of longshore labor who are benefiting from the M & I Agreement but are not contributing to the Fund because of the present plan of assessing only tonnage ultimately loaded to or discharged from vessels.

On the first problem Mr. Sayette reported that the ILWU had informally indicated that they would require all employers not members of PMA to pay the assessment. What was not indicated was whether the payments would be credited to the PMA Fund.

[5] On the second problem the staff was requested to study the matter and report to the Committee on the extent to which longshore labor is being used that escapes assessment entirely. A quantitative estimate will enable the Committee to appraise better the seriousness of the problem. Mr. Sayette said he would also explore the details of some situations in the Northwest which had been mentioned in this connection by Mr. Brown.

The meeting adjourned at 12 Noon.

(for) PETER N. TEIGE, Chairman

Exhibit 21

[1] August 15, 1961

MEMORANDUM FOR B. H. GOODENOUGH:

MECHANIZATION FUND

In accordance with your request of last week, based on discussions held by the Coast Steering Committee at the Villa Hotel several weeks ago, the following represents current information on mechanization fund contributions.

(Exh. 21, 1)

503a

Exhibit 21

Non-Members

Attached is copy of my letter of August 3, 1961, addressed to Mr. Bodine of the ILWU, calling his attention to the non-member problem and asking for ILWU cooperation in seeing that such companies as National Motels pay contributions to the mechanization fund in exactly the same manner as member companies. Mr. Bodine assured me verbally prior to the writing of my letter they would do everything possible to see that non-members are not placed in the position where they have a competitive advantage over member companies.

Coastwise Lumber

W. R. Chamberlin & Co., a member of the Association, has not been making any contributions to the mechanization fund. They state they will not make any contributions until the question of contribution by Oliver J. Olson & Co. and Sause Bros. has been determined. Oliver J. Olson and Sause are non-members and according to Mr. Bodine no arrangement has been made with these companies for a contribution to the Mechanization Fund. Conversations with representatives of Sause and W. R. Chamberlin have been to the effect that a contribution of $13\frac{3}{4}\text{¢}$ per thousand feet of lumber loaded aboard a ship or barge, and a $13\frac{3}{4}\text{¢}$ contribution for the discharging operation would put the coastwise lumber industry out of business. Some determination will have to be made regarding such coastwise lumber tonnages.

Delinquencies

Attached is a 4-page memorandum compiled by the Accounting Department concerning delinquent assessments. The memorandum, as you will note, has been broken down into delinquencies on Government Cargoes, Automobiles, and Regular Commercial Cargoes.

Exhibit 21

The Army in San Francisco, and the Navy in Seattle are now in the process of compiling their tonnages on which mechanization contributions may be due. The Army in San Francisco has indicated through their Contractors, commencing with the month of July contributions will be made currently and as fast as the figures can be accumulated, the contributions for the retroactive period from January 16 thru June 30 will be computed and remittance made thru the Contractors.

[2] Rothschild in Seattle informed me by phone they are just about in the position of completing an agreement with the Navy whereby the Navy will remit to the mechanization fund on a revenue ton basis. We are unable to determine the amount due from Rothschild by reason of the fact they have not submitted any tonnage information whatsoever, and we have coming from Rothschild not only mechanization assessments, but PMA dues as well on such Navy cargoes.

The question of contributions on foreign cars is one which has been under discussion for several months, particularly on account of the position taken by the Volkswagen shippers, who feel they should not pay on a measurement ton basis, but rather on a weight ton. This particular question is one which may well require the help of counsel.

Commercial cargo delinquencies apparently are confined to W. J. Jones & Son and Brady Hamilton Stevedore Co. in Portland, and Rothschild International Stevedoring Co. in Seattle. These particular companies have apparently taken the position they will not pay the Association until they themselves are reimbursed by their non-member principals. Several months sometimes elapses before we secure the contribution on such tonnages in spite of the fact we have repeatedly sent letters to such companies, and in most instances have never received a reply.

(Exh. 21, 2-3)

505a

Exhibit 21

Recommendations of the Funding Committee

The Funding Committee met in the Association offices to discuss not only the subjects already mentioned in this memorandum, but several other items as well. They are as follows:

- 1) The Committee requested the names of delinquent employers and the amount of delinquencies over 30 days, as well as remarks concerning them. This information has already been furnished to the Committee.
- 2) It was recommended that the Board of Directors inaugurate a new policy whereby amounts due the M & I Fund which have not been paid after 30 days from the end of the month in which they accrued shall at that time be deemed delinquent and such employers shall be charged liquidating damages, including interest on the amount delinquent at the rate of 1 per cent per month, or any portion of a month, commencing at the date of delinquency.
- 3) The Committee recommended that a report showing the names of delinquent employers and the amount of delinquency be distributed to the membership if the employer has amounts still delinquent 30 days after the date of original delinquency.
- [3] 4) The Committee recommended to the Board of Directors that Price Waterhouse & Co. conduct a spot-check of tonnage declarations by investigating the declarations of approximately 15 employers a year, subject to holding the total expenditure for the year to \$5,000 or less. Price Waterhouse & Co. had indicated they could check an average employer for about \$300. The Committee further recommended

Exhibit 21

that it might be well to have the spot-checks for this year made as soon as possible.

5) The Committee recommended staff establish a permanent system for periodic forecasting of the adequacy of the Fund assessments. This would involve analyzing past tonnage patterns, studying past errors in tonnage predictions, checking with operators to determine their short-range future tonnage expectations and the like. In this manner the assessment for each six months' period could be more nearly appropriate to the tonnage handled in that period, thereby avoiding the discrimination that would arise by requiring substantial increases in assessments in order to make up past deficits.

Based on contributions received or receivable for the first six months of 1961, it would appear that the Fund will be \$500,000 short of attaining its obligation by December 31, 1961; \$200,000 of this amount could be attributed to the fact contribution did not become effective until January 16, 1961, and the first 15 days of January would have to be made up. The balance does not take into consideration the fact that ordinarily shipping increases the last six months of the year as compared with the first six months. A quick check with several companies, including the Army Contractors, indicates commercial cargoes should increase at least 10 per cent during the last six months of the year as compared with the first six months; whereas, in the case of the Army, the percentage of increase will be even greater. We are writing approximately 25 American and Foreign Flag member companies on the Pacific Coast to furnish us information periodically as to what their forecasts might be as to increase or decrease in tonnage volume during a given period of time.

(Exh. 21, 3; Exh. 22, 1)
507a

Exhibit 22

A copy of the minutes of the meeting of August 1, 1961 is also attached to this memorandum, and reports on certain other points not otherwise contained in this memorandum.

K. F. SAYETTE

KFS:IM

Attachments

cc: J. Paul St. Sure
w/attachments

Exhibit 22

[1] CONFIDENTIAL

MEMORANDUM

October 24, 1961

TO: J. Paul St. Sure
FROM: P. Lancaster
RE: Marine Terminals and Mechanization Fund Contributions on Volkswagens

1. The Volkswagen firm has refused to pay Mechanization Fund contributions on Volkswagens stevedored by Marine Terminals (and in the Northwest by Seattle Stevedoring and Brady-Hamilton). The Volkswagen people object to the measurement ton basis of contribution which costs \$2.76 per vehicle vs. a weight ton cost of 28¢ per vehicle and a long-shore labor cost of \$10.45 per vehicle.

2. We are informed that Marine Terminals has a private contract with Volkswagen guaranteeing payment of the tonnage contributions to Marine Terminals. In order to enforce this private contract and pay to PMA the contributions which it acknowledges as an obligation under the Mechanization Fund (now about \$35,000), Marine Terminals now proposes to (a) sue the Volkswagen people for it or (b) attempt to force payment by refusing to work the next ship unless payment is made. They tell us, how-

Exhibit 22

ever, that the probable consequences of suing or attempting to force payment will be:

(1) Immediate filing by Volkswagen of a petition with the Federal Maritime Board that the Mechanization Fund Agreement violates Section 15 of the Shipping Act of 1916.

We are informed that the petition has already been prepared by the Volkswagen attorneys, Graham, James and Rolph.

(2) Volkswagen may transfer its business from Marine Terminals to another member company. They may do this to save face even though such other member company may require tonnage contributions under the contract offered by it to Volkswagen.

(3) Volkswagen, who is presently prepared to do so, may establish its own stevedoring company outside the Association, either subcontracting supervision and gear from a member company or going whole hog and establishing a complete company.

[2] 3. The consequences of such actions by the Volkswagen firm would be:

(1) The Lillick office says that the petition to the Federal Maritime Board is without merit. It would help if our present in-the-works reply to the Federal Maritime Board were filed before the threatened petition were filed, but it is not essential. The prospect of a Volkswagen petition would seem to be provoking the interest of other companies, including steamship operators, who are restive under the Mechanization Agreement.

(2) The transfer of business from one member to another would, of course, be divisive within the

Exhibit 22

Association, and is an occurrence which should not stem from the Mechanization Agreement. However, such division is not within the ambit of the Association operations under its By-Laws.

The Association is almost certainly barred from taking any action in this matter since such would probably be an anti-trust violation.

(3) The creation of a new stevedoring firm outside the Association would leave the responsibility for setting, collecting, and policing contributions entirely to the ILWU. If such a new firm seems to develop any advantages over Association members, the barn door is open and the fat is in the fire. Some people would hold that merely being out from under the Mechanization Agreement would be an advantage in itself. The Lillick office says that imposing Mechanization Fund contributions on such an outsider has very delicate anti-trust implications, and the Association would have to be very careful of all it did in connection with such a situation. Specifically, the Association could refuse to agree to payments into the fund if they were not comparable to tonnage contributions but otherwise the Association is confined to leaving the matter in ILWU hands and must not be a party to coercing contributions.

(4) If Marine Terminals sues Volkswagen, other shippers similar to Volkswagen may withhold contributions pending the outcome of the suit. This might even include the Army, since they are still querulous about the propriety of such contributions. An open issue of Shipping Act legality might be the jumping off point for further Army resistance.

(Exh. 25, 1)

510a

Exhibit 25

[1] MARINE TERMINALS CORPORATION Contracting Stevedores & Terminal Operators

November 29, 1961

Mr. Peter N. Teige
Chairman, P. M. A. Mechanization Funding Committee
Pacific Maritime Association
16 California Street
San Francisco, California

Dear Mr. Teige:

We wish to refer to the meeting of last Friday, November 14, 1961, with your committee, the agents and principals of Volkswagen and their present stevedore contractors.

During this meeting there definitely was established by your committee an attempt to relieve our association from any responsibility to the extent that they are leaving the direct employers entirely free to absorb assessments if they so desire. We hope that we conveyed to you that the assessment in question represents approximately a 33 $\frac{1}{3}$ % increase on our handling rate. There is no way that the contractor could absorb such an increase as we have benefited nothing before or since the Mechanization & Improvement Fund has been established.

The present assessed rate on automobiles is not based on practical conditions and has no comparison to other commodity assessments.

We recommend and request at your next meeting that changes in this assessment be made along the lines of Mr. Klaff's request.

Very truly yours,

ELLET G. HOBSON,
Vice President.

EGH:mb

(Exh. 26, 1)

511a

Exhibit 26

[1] WINCHESTER AGENCIES, INC.
Steamship Agents and Brokers

November 29, 1961

Mr. Peter N. Teige
Chairman, P.M.A. Mechanization Funding Committee
Pacific Maritime Association
16 California Street
San Francisco, California

Dear Mr. Teige:

We wish to thank you and your associates on the P.M.A. Mechanization Funding Committee for making yourselves available to meet with us last Friday. It is our understanding that, in the near future, your Committee will be considering our objections to the Work Improvement Fund assessment of 27½ cents per ton on a measurement ton basis against unboxed automobiles handled at United States Pacific Coast Ports. We believe that it may be mutually helpful to have a brief recapitulation of our position in writing.

Ever since Volkswagens were first shipped to the Pacific Coast in 1954, they have been freighted on a unit basis, or on lumpsum FIO or time charter. Other than those full cargo charter vessel shipments, not only freight but also terminal services including stevedoring, have always been computed and paid at so much per unit. However, we understand that in other trades unboxed automobiles are freighted sometimes on a weight basis, sometimes on a measurement basis, but also frequently on a unit basis. And, in the past, the computation and payment of cargo dues owed to your Association in respect of unboxed automobiles has been made on all three basis: By unit, by weight and by measurement ton.

Exhibit 26

In January of 1961, your Committee determined that the required contributions to make up the Work Improvement Fund by P.M.A. members, including the terminal operators who handle our Volkswagens, would comprise an assessment of 27½ cents a ton on "general cargo", 27½ cents a thousand board feet on lumber and 5½ cents a ton on bulk cargo. The assessment on "general cargo" was to be computed on the basis of weight or measurement tons depending upon whether the particular cargo had been manifested as weight or measurement cargo in 1959. Thereafter, it was determined to compute the assessment on unboxed automobiles on a measurement ton basis, regardless of the fact that Volkswagens in the Europe to Pacific trade, and all unboxed autos in the Intercoastal and Pacific Coast to Hawaii trade had never been so manifested.

[2] As we have already informed you, the result of this assessment on a measurement ton basis will be to increase the discharging costs of Volkswagens approximately 22% in the case of sedans and 31% in the case of transporters. In contrast, we estimate the average increase in the discharging costs of packaged general cargo resulting from this assessment to be approximately 2.2%. The injustice of a measurement ton assessment against unboxed autos is accentuated by the fact that the man-hours necessarily employed in their handling always have been less than practically any other commodity. This situation results directly from the "unitized" nature of unboxed autos. It is our position that this disproportionate increase in the cost of discharging Volkswagens and other unboxed automobiles subjects that description of traffic to undue and unreasonable prejudice and disadvantage in violation of Section 16 (First) of the Shipping Act, 1916. Furthermore, this prejudicial assessment results from the contrary of the just and reasonable regulations and practices relating to the handling, storing and delivery of property which are required of all persons subject to the same Act by Section

Exhibit 26

17. In our opinion there is no question but that the terminal operators who are demanding payment of this assessment from us directly, as well as your Association, which has compelled them of necessity to this by its unjust and unreasonable regulations, are subject to Sections 16 and 17 of the Shipping Act, 1916.

It is our impression from our meeting with your Committee that at least some of its members recognize that the over-simplification of your assessment necessarily results in prejudice to certain classes of cargo. We appreciate your desire to keep the assessment as simple as possible but we must point out that regardless of the merit of such simplicity it does not provide justification for a failure to observe the just and reasonable regulations and practices required by law.

Before closing, we have two suggestions to make, viz:

1. If your Association maintains its present approach to the funding of this program, we submit that it is only equitable that unboxed autos be assessed on the basis upon which they are normally handled between factory, loading terminal, ship's hold, discharge terminal, distributor, dealer, retail buyer—namely, per unit. This is comparable to the treatment which your Association has applied in a "per thousand board feet" application to lumber. (Automobiles are factory assembled as units to assure reliability of performance and ready use in the retail market, and not to reduce transportation costs; in fact, if shipped in disassembled form, the transport cubic measurement of a Volkswagen auto would be substantially less than its assembled unit measurement.) In any case, we urge that the assessment levied against all commodities, including unboxed autos, be such as to result in approximately equal percentage of cargo-handling costs.

[3] 2. While we believe that an assessment per unit could be equitably established for unboxed automobiles as expressed above, we alternatively suggest that the assess-

(Exh. 26, 3)

514a

Exhibit 26

ment on all commodities except bulk cargo be made on the basis of:

- a) Fixed percentage of total cargo-handling expenses on board, alongside and in the terminal (plus fixed allowance for usage of specific cargo-handling equipment); or
- b) Fixed percentage of the total manifest freight.

We shall appreciate your acquainting the other members of your Committee with the contents of this letter. We thank you for your consideration and look forward to hearing from you in due course.

Very truly yours,

WINCHESTER AGENCIES, INC.,
PETER CURTIS

PC:mt

cc: Mr. J. Paul St. Sure, President
Pacific Maritime Association

cc: Mr. P. Lancaster, Secretary
P.M.A. Mechanization Funding Committee

cc: Mr. F. Klaffs, Volkswagenwerk, A.G.
Shipping Department, Wolfsburg

cc: Graham, James & Rolph
Attention: Mr. A. D. Calhoun, Jr.

(Exh. 28, 1)

515a

Exhibit 28

[1] February 8, 1962

M & M FUND

MEMO ON PROPOSED FIVE TO ONE MAXIMUM LIMITATION ON ASSESSABLE TONNAGE FOR AUTOMOBILES

Total automobile measurement tonnage handled in 1961,
based on actual declarations for ten months and estimated
tonnage for two months 1,173,242 tons
@ the current assessment rate of 24½¢
per ton \$287,444.00

Assuming nine to one to be a reasonably average cubic
to weight ratio, the imposition of a five to one limitation
would reduce the contributions on autos by 44.4% or
\$127,625.00 leaving this amount to be made up in some other
manner. If an across-the-board rate adjustment were used
to recoup the deficit, an estimated 2.6% increase would be
required.

C. J. MYERS

(Exh. 29, 1)

516a

Exhibit 29

[1] February 20, 1962

MEMORANDUM FOR J. PAUL ST. SURE:

VOLKSWAGENS

Several days ago Curt Myers and I had a conference with Edward Ransom and Gary Torro of Lillick's office, at which time we discussed various ways of collecting monies due from contracting stevedores for handling Volkswagens by the particular contractors. The contributions I specifically refer to represent monies due the Modernization and Mechanization Fund.

Mr. Ransom summarized in very concise form the various problems we would be faced with in the event suit was instituted. It will be gathered from this memo the situation is complex, and depending upon the action taken, may involve us not only with the contracting stevedores but with the Maritime Administration.

The method which may be chosen to effectuate collection of these delinquent M & M contributions is, I believe, a policy question; consequently, the matter is being referred to you for your consideration.

I might further add that Peter Teige of the Modernization and Mechanization Committee has asked for a meeting of the committee to be held on Wednesday afternoon, February 21st, to discuss a theory which he has regarding the reduction of assessments on automobiles to a lesser amount. For your ready reference a copy of the memo which was sent to the Funding Committee dated February 8, is attached for your information.

K. F. SAYSETTE

KFS:IM
Attachment
cc: C. J. Myers

(Exh. 31, 1)

517a

Exhibit 31

[1] MEMORANDUM

March 27, 1962

TO: J. Paul St. Sure and Ben Goodenough
FROM: Pres Lancaster
SUBJECT: Mechanization Fund Assessments—Marine
Terminals and Volkswagen

It was agreed this morning by the Coast Steering Committee that:

- 1) In order to satisfy a previous commitment, staff should write a letter to Marine Terminals (or Volkswagen) advising them that the Funding Committee had again re-considered the Mechanization Fund assessment on unboxed automobiles and did not recommend any change in the present assessment. Further, the Funding Committee did not expect that there would, in the near future, be any change in the over-all assessment method which would change the assessments on this class of commodity.
- 2) The Coast Steering Committee recommends to the PMA Board of Directors that the action of the Board of December 13, 1961, by which PMA offered legal aid and assistance to Marine Terminals in obtaining payment from Volkswagen be reviewed and clarified. The Coast Steering Committee recommends to the Board that PMA counsel assist Marine Terminals only if any action by or against Marine Terminals raises issues which jeopardize the Mechanization Plan or other interests of the industry, in which case PMA counsel is authorized to intervene and, if necessary, assume responsibility for handling that portion of the action involving such issues. Except in such circumstances, neither PMA nor its counsel is to be involved in

Exhibit 31

any action by Marine Terminals against Volkswagen. If PMA counsel acts in such circumstances, PMA reserves the right to institute action against Marine Terminals if Marine Terminals is itself still in default of Mechanization Fund Assessments, including those due on the Volkswagen account.

3) In light of the above, PMA advises Marine Terminals, and all other companies owing assessments on Volkswagen, that such assessments are due, and that these companies should take such action as they deem necessary to obtain payment from their principals.

It should be noted that counsel has pointed out that cumulative defaults, both on the account of companies handling Volkswagen business and on the account of companies handling Army cargo, tend to create a situation in which it can be held that the circumstances of the IRS ruling no longer govern because the "reasonable" relationship between contributions and benefits paid to beneficiaries has been distorted from one tax year to the next.

PL/ns

cc: K. F. Saysette

(Exh. 32, 1)

519a

Exhibit 32

[1] McCUTCHEON, DOYLE, BROWN & ENERSEN
Counselors at Law
601 California Street
San Francisco 8, California

December 10, 1962

DELIVER
Marine Terminals Corporation
261 Steuart Street
San Francisco 5, California

PMA Mechanization Fund Assessments

Dear Sirs:

As requested, we are writing to provide a brief outline of the background and status of the controversy relating to the Mechanization Fund assessments on Volkswagen autos.

Effective January 1, 1961 PMA and ILWU entered into a Supplemental Agreement on Mechanization and Modernization, calling for the creation of a special fund for longshoremen. It was left up to PMA to determine how contributions would be made to the Fund. In due course it was determined by PMA that stevedore and terminal companies should contribute to the Fund certain amounts with respect to each ton of cargo handled. It was contemplated that these assessments, as added stevedoring or terminal costs, could be added to the charges of the stevedore or terminal companies.

Whether the assessments were to be levied according to measurement tons or weight tons depended, in general, upon the basis used for calculating the ocean freight. At the outset, there was uncertainty as to whether shippers of autos would, in effect, be given an option to have assessments on a weight-ton basis by the device of having the ocean freight

Exhibit 32

calculated on that basis. For various reasons, it was determined that all automobiles should be assessed on a measurement-ton basis. Volkswagenwerk vigorously objected to this method [2] of assessment, contending that it discriminated against autos and resulted in a payment which was out of proportion to benefits received. After a good deal of controversy and negotiation, both before and after the Agreement went into effect, PMA decided to adhere to a uniform assessment on a measurement-ton basis.

Volkswagenwerk refused to pay the assessment on this basis, whether billed as part of the basic stevedoring charge or billed separately. It specifically refused to agree to a new commodity rate which would include the assessment. Its position was that if stevedoring services were billed on a commodity rate basis, the amount of the assessment would be deducted and only the balance paid. Because of Volkswagenwerk's adamant position, Marine Terminals has continued to bill the Mechanization Fund assessments separately. Volkswagenwerk has continued to refuse payment of these assessments.

Not only has Volkswagenwerk refused to pay the assessment, it has refused also to post any security to cover any amount of assessments which might ultimately be held to be due. Because of this refusal, PMA filed suit against Marine Terminals in the United States District Court to recover the amounts of the assessments and Marine Terminals, in turn, impleaded Volkswagenwerk as the party ultimately liable.

As expected, Volkswagenwerk answered the suit by contending that the assessments were illegal under the Shipping Act. It asked that the suit be stayed to permit proceedings before the Federal Maritime Commission to determine the legality of the assessments. As we reported to you recently, the District Court granted Volkswagenwerk's request for a stay, on condition that proceedings be com-

(Exh. 32, 2; Exh. 35, 1)
521a

Exhibit 35

menced before the Federal Maritime Commission by December 29. The Court refused to consider our contention that the Commission has no jurisdiction.

While it is difficult to predict how long proceedings before the Commission might take, it might well require a year or more to obtain a ruling. Additional time might be required if the losing party should appeal from the Commission's decision.

Very truly yours,

McCUTCHEON, DOYLE, BROWN & ENERSEN
By BRYANT K. ZIMMERMAN

2 cc encl.

Exhibit 35

[1] PACIFIC MARITIME ASSOCIATION
16 California Street
Phone DOuglas 2-7973
San Francisco 11, Cal.

January 17, 1961

To MEMBERS:

MECHANIZATION AND MODERNIZATION FUND

At a meeting of the Board of Directors held on Monday, January 16, 1961, on problems relating to the recently ratified agreement with the ILWU setting up a Mechanization and Modernization Fund, the following items were approved:

- 1) Contribution rate on General Cargo will be 27½¢ per ton, as manifested with 2000 pounds weight, 40 cubic feet measurement and 1000 board feet of lumber constituting a ton. This is comparable to

Exhibit 35

reporting presently being made by members for PMA tonnage dues purposes.

2) Contribution rate on Bulk Cargo will be $5\frac{1}{2}\text{¢}$ per ton, with bulk cargo being defined as a commodity which by nature of its unsegregated mass is usually handled by shovels, scoops, buckets, forks or mechanical conveyors and is loaded or unloaded and carried without wrapper or container and received and delivered by carriers without transportation mark, or count.

3) Scrap metal, such as scrap iron, pig iron and steel shavings— $5\frac{1}{2}\text{¢}$ per ton when handled on an unpackaged basis by shovels, scoops, buckets, forks, magnets or mechanical conveyor *and not in containers* which are loaded or unloaded and carried without wrapper or container and without transportation mark, or count.

4) Effective date of contribution is January 16, 1961 on all vessels which have commenced loading or discharging cargoes in a particular port on and after that date. Any operation which started in a port prior to January 16, 1961 will not be affected by the Mechanization contribution.

5) Coastwise and transshipped cargoes will carry the full contribution rate for mechanization purposes.

6) Tonnage declarations by companies are to be made in exactly the same manner as manifested and reported to the Association for dues purposes during the year 1959 (excepting scrap iron and pig iron) and any changed method of manifesting from that date will not be valid for reporting tonnages covering Mechanization Fund contributions.

(Exh. 35, 1-2)

523a

Exhibit 35

7) Declarations of tonnages will be made, as in the past, by member steamship companies and contracting stevedores reporting for non-member companies and government agencies, being made in exactly the same manner by such companies as PMA dues. Mechanization contributions are part of a labor contract, and it is essential Reports of Tonnages and a check for contributions be in the Association's hands *not later than the 20th of the month following the month in which such cargoes are handled.*

[2] 8) The Directors have agreed the Association may employ certified public accountants to check tonnage declarations made by companies to substantiate such declarations and contributions paid.

9) The Directors further agreed a committee is to be appointed to evaluate the reporting and assessment program with a report to be submitted to the Directors 30 days prior to the expiration of the six months' trial period of assessment procedures voted by the Directors and Membership.

The declaration form presently used for reporting tonnages to the Association for dues purposes will also be utilized for the Mechanization and Modernization program. Association staff is presently working on a remittance advice for payment of mechanization contributions which will utilize information on the tonnage declaration on a recapitulation basis to compute the amounts due the Mechanization Fund. This form, with instructions, should be in your hands not later than the first of February and in sufficient time to report January tonnage and pay contributions.

K. F. SAYSETTE
Vice President & Treasurer

KFS:IM

(Exh. 36, 1)

524a

Exhibit 36

[1] PACIFIC MARITIME ASSOCIATION
16 California Street
San Francisco, Calif.

February 3, 1961

MEMBERS:

CARGO DUES—TONNAGE—AUTOMOBILES

Our letter of January 16, 1958 stated automobiles should be reported to the Association on a measurement basis to tonnage dues purposes. We indicated that if a steamship company or contracting stevedore was reporting automobiles, or any other cargo, using weight when measurement should have been used, a supplementary tonnage report should be submitted promptly to the Association adjusting such errors, together with a check to cover the additional amount of dues involved.

Since the institution of the Modernization and Improvement Fund, it has come to our attention a number of contracting stevedores and steamship companies are still reporting automobiles for tonnage dues purposes on a weight basis instead of measurement. The theory of dues and assessments is predicated on the fact member companies shall pay on exactly the same basis thereby assuring all companies each is paying its fair share of a dues or assessment program.

Any steamship company or contracting stevedore who has not been reporting and paying dues on automobiles on a measurement basis since January 1958 should immediately complete a revised tonnage declaration form indicating by vessel and date the tonnage on automobiles reported on a weight basis, the tonnage which should have been reported on a measurement basis, and the difference which is assessable at $2\frac{1}{2}$ cents per ton. This statement should be com-

(Exh. 36, 1; Exh. 39, 1)
525a

Exhibit 39

pleted as promptly as possible and sent to the Association with a check to cover the amount of additional dues involved. Future reports on automobiles for PMA dues and Modernization and Improvement Fund purposes are to be made on a measurement basis.

A report no doubt will have to be made to the Board of Directors regarding status of tonnage dues on automobiles in the very near future covering the period January 1958 to the present time.

K. F. SAYSETTE,
Vice President & Treasurer

KFS:IM

Exhibit 39

[1] PACIFIC MARITIME ASSOCIATION
16 California Street
Phone DOuglas 2-7973
San Francisco 11, Cal.

February 9, 1960

To BOARD OF DIRECTORS:

CERTIFICATION OF 1959 TONNAGE AND AVERAGE MONTHLY
SEAGOING PERSONNEL FOR QUARTER ENDING
DECEMBER 31, 1959 FOR VOTING PURPOSES

1960

Article VI, Section 2 of the Association By-Laws requires the Secretary to certify to the Board of Directors the tonnage of cargo loaded and/or discharged by or for each member during the preceding calendar year. The Section also requires the Secretary to report the average number of seagoing employees employed by members of the Passenger Line Group, Coastwise Group, Alaska Group,

(Exh. 39, 1)

526a

Exhibit 39

Intercoastal Line Group and Offshore Group, during the preceding quarter. These employees work under collective bargaining contracts executed by the Association on behalf of members in the above groups. There is submitted for your consideration a listing of members and the tonnage and average number of seagoing employees reported by them as recorded in the financial records of the Association.

Opposite each member is listed the number of votes based on tonnage and seagoing employees as provided in the By-Laws; i.e., one vote for each member and, in addition, one vote for each full 100,000 tons and one vote for each full 100 seagoing employees.

Respectfully submitted,

PACIFIC MARITIME ASSOCIATION
J. A. ROBERTSON
Secretary

JAR:vs
Attach.

(Exh. 39, 1-2 of Att.)

527a

(Attached to Exhibit 39)

[1] PACIFIC MARITIME ASSOCIATION

VOTING STRENGTH

BASED OF 1959 TONNAGE AND AVERAGE SEAGOING PERSONNEL
FOR THE QUARTER ENDING DECEMBER 31, 1959

Company	Tonnage	Personnel	Votes
1. Alaska Steamship Company	390,866	366	7
2. Alaska Teminal & Steve. Co.	—	—	1
3. Albin Stevedore Co.	5,901	—	1
4. Albina Dock Co.	—	—	1
5. American-Hawaiian Steamship Co.	—	—	1
6. American Mail Line	397,105	449	8
7. American President Lines	563,025	2,113	27
8. Anacortes Stevedoring Co., Inc.	2,928	—	1
9. Associated-Banning	281,070	—	3
10. Balfour, Guthrie & Co., Ltd.	730,599	—	8
11. Barber Steamship Lines, Inc.	36,957	—	1
12. Bellingham Steve. Co.	18,851	—	1
13. The Blue Star Line, Inc.	110,400	—	2
14. Brady-Hamilton Stevedore Co.	1,134,189	—	12
15. Bulk Handlers, Inc.	—	—	1
16. California Stevedore & Ballast Co.	1,162,149	—	13
17. Canadian Gulf Line, Ltd.	257,860	—	3
18. W. R. Chamberlin & Co.	—	—	1
19. Coast Stevedore Co.	—	—	1
20. Coastwise Line	370,030	46	4
21. Columbia Basin Terminals	—	—	1
22. Consolidated Steve. Co.	2,963	—	1
23. Crescent Wharf & Warehouse Co.	391,404	—	4
24. The East Asiatic Co., Inc.	126,019	—	2
25. Encinal Terminals	—	—	1
26. Everett Stevedoring Co.	48,598	—	1
27. Fern-Ville Lines	7,876	—	1
28. French Line	290,609	—	3
29. Furness, Withy & Co., Ltd.	315,996	—	4
30. General Stevedore & Ballast Co.	49,679	—	1
31. Grace Line Inc.	300,963	371	7
32. Griffiths & Sprague Steve. Co.	175,693	—	2
33. Holland-America Line	184,321	—	2

[2]

(Exh. 39, 2-4 of Att.)

528a

Exhibit 39

	Company	Tonnage	Personnel	Votes
	34. Howard Terminal	200,340	—	3
	35. Humboldt Stevedore Co., Ltd.	47,917	—	1
	36. Independent Stevedore Co.	222,058	—	3
	37. Indies Terminal Co.	—	—	1
	38. International Terminals, Inc.	—	—	1
	39. Interoccean Line	284,373	—	3
	40. Interstate Carloading Co.	—	—	1
	41. Italian Line	129,660	—	2
	42. Johnson Line	318,122	—	4
	43. Jones Stevedoring Co.	1,545,641	—	16
	44. W. J. Jones & Son, Inc.	1,891,103	—	19
	45. Kerr Steamship Co., Inc.	267,061	—	3
	46. Klaveness Line	17,497	—	1
[3]	47. Knutson Line	109,851	—	2
	48. Lines Service Steve. Inc.	—	—	1
	49. Luckenbach Steamship Co., Inc.	916,175	78	10
	50. M & R Services, Inc.	—	—	1
	51. Maersk Line Agency	—	—	1
	52. Marine Terminals Corp.	304,815	—	4
	53. Marine Terminals Corp. of L. A.	402,229	—	5
	54. Matson Navigation Company	2,585,548	2,267	48
	55. Matson Terminals, Inc.	—	—	1
	56. Metropolitan Steve. Co.	711,503	—	8
	57. Mutual Stevedoring Co.	—	—	1
	58. Mutual Terminals, Inc.	—	—	1
	59. Oceanic Steamship Co.	—	—	1
	60. Ocean Terminals	—	—	1
	61. Fred. Olsen Line Agency, Ltd.	236,340	—	3
	62. Olympia Stevedoring Co.	9,306	—	1
	63. Olympic-Griffiths Lines, Inc.	321,764	—	4
	64. Olympic Peninsula Steve. Co.	28,456	—	1
	65. Olympic Steamship Co., Inc.	—	—	1
	66. Oregon Stevedoring Co., Inc.	129,725	—	2
	67. Outer Harbor Dock & Wharf, Inc.	48,566	—	1
	68. Overseas Shipping Co.	176,173	—	2
	69. Pacific Atlantic Steamship Co.	—	—	1
	70. Pacific Australia Direct Line	—	—	1
	71. Pacific Far East Line, Inc.	811,974	916	18
[4]	72. Pacific Islands Transport Line	41,358	—	1
	73. Pacific Oriental Terminal	—	—	1
	74. Pacific Orient Express Line	104,529	—	2

(Exh. 39, 4-5 of Att.)

529a

Exhibit 39

Company	Tonnage	Personnel	Votes
75. Pacific Ports Service Co.	—	—	1
76. Pacific Republics Line	207,141	377	6
77. Panama Pacific Line	—	—	1
78. Parr-Richmond Terminal Co.	197,688	—	2
79. Pope & Talbot, Inc.	422,671	273	7
80. Portland Stevedoring Co.	394,268	—	3
81. Rothschild-International Steve. Co.	859,250	—	9
82. Rothschild's Alaska Steve. Co., Inc.	69,831	—	1
83. Royal Mail Lines, Ltd.	140,373	—	2
84. Salmon Terminals	—	—	1
85. The San Francisco Steve. Co.	65,998	—	1
86. Schirmer Stevedore Co., Ltd.	128,559	—	2
87. Seaboard Stevedoring Corp.	230,786	—	3
88. Seattle Bulk Loading Terminal, Inc.	144,549	—	2
89. Seattle Stevedore Co.	298,627	—	3
90. Shaffer Terminals	—	—	1
91. C. F. Sharp & Co., Inc.	—	—	1
92. Star Terminal Co., Inc.	—	—	1
93. States Marine Lines	445,646	—	5
94. States Steamship Co.	503,726	653	12
95. Tait Stevedoring Co., Inc.	97,046	—	1
96. Transpacific Trans. Co.	498,245	—	5
97. Twin Harbor Steve. & Tug Co.	76,246	—	1
98. Union SS Co. of N. Z., Ltd.	16,355	—	1
99. Washington Stevedoring Co.	25,194	—	1
100. West Coast Steamship Co.	—	177	2
101. West Coast Terminals Co. of Calif.	77,161	—	1
102. Westfal-Larsen Co. Line	97,935	—	1
103. Weyerhaeuser Steamship Co.	377,284	215	6
104. Willapa Harbor Steve. Co.	22,450	—	1
105. Williams, Dimond & Co.	—	—	1
106. Yerba Buena Corp.	39,853	—	1
107. Zidell Docks, Inc.	37,155	—	1
Total	24,791,172	8,301	396

[5]

(Exh. 40, 1)

530a

Exhibit 40

[1] PACIFIC MARITIME ASSOCIATION
16 California Street
Phone DOuglas 2-7973
San Francisco 11, Cal.

March 6, 1961

To BOARD OF DIRECTORS:

CERTIFICATION OF 1960 TONNAGE AND AVERAGE MONTHLY
SEAGOING PERSONNEL FOR QUARTER ENDING DECEMBER
31, 1960 FOR VOTING PURPOSES 1961

Article VI, Section 2 of the Association By-Laws requires the Secretary to certify to the Board of Directors the tonnage of cargo loaded and/or discharged by or for each member during the preceding calendar year. The Section also requires the Secretary to report the average number of seagoing employees employed by members of the Passenger Line Group, Coastwise Group, Alaska Group, Intercoastal Line Group and Offshore Group, during the preceding quarter. These employees work under collective bargaining contracts executed by the Association on behalf of members in the above groups. There is submitted for your consideration a listing of members and the tonnage and average number of seagoing employees reported by them as recorded in the financial records of the Association.

Opposite each member is listed the number of votes based on tonnage and seagoing employees as provided in the By-Laws; i.e., one vote for each member and, in addition, one vote for each full 100,000 tons and one vote for each full 100 seagoing employees.

Respectfully submitted,

PACIFIC MARITIME ASSOCIATION
J. A. ROBERTSON
Secretary

JAR:ah
Attachment

(Exh. 40, 1-2 of Att.)

531a

Exhibit 40

(Attached to Exhibit 40)

[1] PACIFIC MARITIME ASSOCIATION

VOTING STRENGTH

BASED ON 1960 TONNAGE AND AVERAGE SEAGOING PERSONNEL
FOR THE QUARTER ENDING DECEMBER 31, 1960

Company	Tonnage	Personnel	Votes
1. Alaska Steamship Company	430,946	352	8
2. Alaska Terminal & Steve. Co.	—	—	1
3. Albin Stevedore Co.	8,352	—	1
4. Albina Dock Co.	—	—	1
5. American-Hawaiian SS Co.	—	—	1
6. American Mail Line	498,293	423	9
7. American President Lines	596,065	2,077	26
8. Anacortes Stevedoring Co.	1,322	—	1
9. Associated-Banning Co.	412,868	—	5
10. Balfour, Guthrie & Co., Ltd.	752,100	—	8
11. Barber Steamship Lines, Inc.	26,811	—	1
12. Bellingham Steve. Co.	19,782	—	1
13. The Blue Star Line, Inc.	127,863	—	2
14. Brady-Hamilton Steve. Co.	1,316,503	—	14
15. Bulk Handlers, Inc.	—	—	1
16. California Stevedore & Ballast Co.	1,369,474	—	14
17. Canadian Gulf Line, Ltd.	268,718	—	3
18. W. R. Chamberlin & Co.	65,631	24	1
19. Coast Stevedore Co.	—	—	1
20. Coastwise Line	—	50	1
21. Columbia Basin Terminals	—	—	1
22. Consolidated Steve. Co.	17,119	—	1
23. Crescent Wharf & Warehouse Co.	355,923	—	4
24. Daido Kaiun Kaisha	—	—	1
25. The East Asiatic Co., Inc.	112,239	—	2
26. Encinal Terminals	—	—	1
27. Everett Stevedoring Co.	53,126	—	1
28. Fern-Ville Lines	15,987	—	1
29. Flota Mercante Grancolobiana, S.A.	—	—	1
30. French Line	202,368	—	3
31. Furness, Withy & Co., Ltd.	312,273	—	4
32. General Steve. & Ballast Co.	27,975	—	1
33. Grace Line, Inc.	284,860	297	5
34. Griffiths & Sprague Steve. Co.	—	—	1

[2]

Exhibit 40

Company	Tonnage	Personnel	Votes
35. Hamburg-Amerika Line	—	—	1
36. Holland-America Line	174,484	—	2
37. Howard Terminal	261,540	—	3
38. Humboldt Steve. Co., Ltd.	55,750	—	1
39. Iino Lines	—	—	1
40. Independent Stevedore Co.	200,082	—	3
41. Indies Terminal Co.	—	—	1
42. International Terminals, Inc.	—	—	1
43. InterOcean Line	258,960	—	3
44. Interstate Carloading Co.	—	—	1
45. Italian Line	154,993	—	2
46. Johnson Line	345,399	—	4
47. Jones Stevedoring Co.	1,741,528	—	18
48. W. J. Jones & Son, Inc.	2,676,252	—	27
49. Kawasaki Kisen Kaisha, Ltd.	16,671	—	1
50. Kerr Steamship Co., Inc.	266,375	—	3
[3] 51. Klaveness Line	29,520	—	1
52. Knutsen Line	134,039	—	2
53. Lines Service Steve. Inc.	—	—	1
54. Luckenbach SS Co., Inc.	557,377	57	6
55. M. & R. Services, Inc.	29,400	—	1
56. Maersk Line Agency	40,758	—	1
57. Marine Terminals Corp.	398,326	—	4
58. Marine Terminals Corp. of L.A.	607,190	—	7
59. Matson Navigation Company	2,844,316	2138	50
60. Matson Terminals, Inc.	—	—	1
61. Metropolitan Steve. Co.	1,254,142	—	13
62. Mitsui Steamship Co., Ltd.	29,361	—	1
63. Mutual Terminals, Inc.	—	—	1
64. Nippon Yusen Kaisha	—	—	1
65. North German Lloyd	—	—	1
66. Oceanic Steamship Co.	—	—	1
67. Ocean Terminals	—	—	1
68. Fred Olsen Line Agency, Ltd.	206,871	—	3
69. Olympia Stevedoring Co.	2,223	—	1
70. Olympic-Griffiths Lines, Inc.	—	—	1
71. Olympic Peninsula Steve. Co.	12,017	—	1
72. Olympic Steamship Co., Inc.	—	25	1
73. Oregon Stevedoring Co., Inc.	47,463	—	1
74. Outer Harbor Dock & Wharf, Inc.	13,453	—	1

(Exh. 40, 3-5 of Att.)

533a

Exhibit 40

	Company	Tonnage	Personnel	Votes
[4]	75. Overseas Shipping Co.	160,844	—	2
	76. Pacific Atlantic SS Co.	—	—	1
	77. Pacific Australia Direct Line	—	—	1
	78. Pacific Far East Line, Inc.	811,668	957	18
	79. Pacific Islands Transport Line	29,106	—	1
	80. Pacific Oriental Terminal	—	—	1
	81. Pacific Orient Express Line	103,559	—	2
	82. Pacific Ports Service Co.	—	—	1
	83. Pacific Republics Line	222,074	370	6
	84. Panama Pacific Line	—	—	1
	85. Parr-Richmond Terminal Co.	198,378	—	2
	86. Pope & Talbot, Inc.	422,655	319	8
	87. Portland Stevedoring Co.	715,461	—	8
	88. Rothschild-International Steve. Co.	1,329,321	—	14
[5]	89. Rothschild's Alaska Steve. Co., Inc.	1,724	—	1
	90. Royal Mail Lines, Ltd.	143,295	—	2
	91. Salmon Terminals	—	—	1
	92. The San Francisco Steve. Co.	48,420	—	1
	93. Schirmer Stevedore Co., Ltd.	58,052	—	1
	94. Seaboard Stevedoring Corp.	193,528	—	2
	95. Seattle Bulk Loading Terminal, Inc.	306,154	—	4
	96. Seattle Stevedore Co.	1,278,732	—	13
	97. Shaffer Terminals	—	—	1
	98. C. F. Sharp & Co., Inc.	—	—	1
	99. Star Terminal Co., Inc.	—	—	1
	100. States Marine Lines	570,814	—	6
	101. States Steamship Co.	512,680	653	12
[5]	102. Tait Stevedoring Co., Inc.	95,276	—	1
	103. Transpacific Trans. Co.	445,683	—	5
	104. Twin Harbor Steve. & Tug Co.	94,524	—	1
	105. Union SS Co. of N.Z., Ltd.	17,033	—	1
	106. Washington Stevedoring Co.	42,006	—	1
	107. West Coast Steamship Co.	—	190	2
	108. West Coast Terminals Co. of Calif.	165,732	—	2
	109. Westfal-Larsen Co. Line	128,266	—	2
	110. Weyerhaeuser Steamship Co.	384,359	280	6
	111. Willapa Harbor Steve. Co.	31,248	—	1
	112. Williams, Dimond & Co.	—	—	1
	113. Yerba Buena Corp.	33,232	—	1
	114. Zidell Docks, Inc.	38,878	—	1
Total		28,217,790	8,212	438

(Exh. 41, 1)

534a

Exhibit 41

[1] **PACIFIC MARITIME ASSOCIATION**
16 California Street
Phone DOuglas 2-7973
San Francisco 11, Cal.

March 13, 1962

To BOARD OF DIRECTORS.

CERTIFICATION OF 1961 TONNAGE AND AVERAGE MONTHLY
SEAGOING PERSONNEL FOR QUARTER ENDING
DECEMBER 31, 1961 FOR VOTING PURPOSES
1962

Article VI, Section 2 of the Association By-Laws requires the Secretary to certify to the Board of Directors the tonnage of cargo loaded and/or discharged by or for each member during the preceding calendar year. The Section also requires the Secretary to report the average number of seagoing employees employed by members of the Passenger Line Group, Coastwise Group, Alaska Group, Intercoastal Line Group and Offshore Group, during the preceding quarter. These employees work under collective bargaining contracts executed by the Association on behalf of members in the above groups. There is submitted for your consideration a listing of members and the tonnage and average number of seagoing employees reported by them as recorded in the financial records of the Association.

Opposite each member is listed the number of votes based on tonnage and seagoing employees as provided in the By-Laws; i.e., one vote for each member and, in addition, one vote for each full 100,000 tons and one vote for each full 100 seagoing employees.

Respectfully submitted,

PACIFIC MARITIME ASSOCIATION
J. A. Robertson
Secretary

JAR:ah
Attachment

(Exh. 41, 1-2 of Att.)

535a

Exhibit 41

(Attached to Exhibit 41)

[1] PACIFIC MARITIME ASSOCIATION

VOTING STRENGTH

BASED ON 1959 TONNAGE AND AVERAGE SEAGOING PERSONNEL
FOR THE QUARTER ENDING DECEMBER 31, 1961

Company	Tonnage	Personnel	Votes
1. Alaska Steamship Company	407,652	274	7
2. Alaska Terminal & Steve. Co.	2,065	—	1
3. Albin Stevedore Co.	53,107	—	1
4. Albina Dock Company	—	—	1
5. American Mail Line	442,469	443	9
6. American President Lines	427,900	2,133	26
7. Anacortes Stevedoring Co.	3,307	—	1
8. Associated-Banning Co.	649,006	—	7
9. Balfour, Guthrie & Co., Ltd.	681,185	—	7
10. Barber Steamship Lines, Inc.	37,162	—	1
11. Bellingham Steve. Co.	45,270	—	1
12. The Blue Star Line, Inc.	102,994	—	2
13. Brady-Hamilton Steve. Co.	1,321,176	—	14
14. Bulk Handlers, Inc.	48,967	—	1
15. California Stevedore & Ballast Co.	1,702,297	—	18
16. Calmar Steamship Corp.	539,036	—	6
17. Canadian Gulf Line, Ltd.	255,301	—	3
18. W. R. Chamberlin & Co.	44,061	24	1
19. Coast Stevedore Co.	51,661	—	1
20. Coastwise Line	—	—	1
21. Consolidated Steve. Co.	150,979	—	2
22. Crescent Wharf & Warehouse Co.	225,844	—	3
23. Daido Kaiun Kaisha	77,962	—	1
24. Diablo Seaway Terminals	108,128	—	2
25. The East Asiatic Co., Inc.	79,622	—	1
26. Encinal Terminals	14,574	—	1
27. Everett Stevedoring Co.	33,950	—	1
28. Fern-Ville Lines	12,373	—	1
29. Flota Mercante Grancolobiana, S.A.	—	—	1
30. French Line	168,643	—	2
31. Furness, Withy & Co., Ltd.	244,205	—	3
32. General Steve. & Ballast Co.	150,743	—	2
33. Grace Line, Inc.	289,524	335	6

Exhibit 41

Company	Tonnage	Personnel	Votes
34. Griffiths & Sprague Steve. Co.	—	—	1
35. Hamburg-Amerika Line	—	—	1
36. Holland-America Line	159,806	—	2
37. Howard Terminal	267,835	—	3
38. Humboldt Steve. Co., Ltd.	49,406	—	1
39. Lino Lines	64,759	—	1
40. Independent Stevedore Co.	157,088	—	2
41. Indies Terminal Co.	—	—	1
42. International Terminals, Inc.	173,758	—	2
43. Interoceane Line	—	—	1
44. Interstate Carloading Co.	—	—	1
45. Italian Line	80,676	—	1
46. Johnson Line	354,894	—	4
47. Jones Stevedoring Co.	1,412,571	—	15
[3] 48. W. J. Jones & Son, Inc.	2,348,905	—	24
49. Kawasaki Kisen Kaisha, Ltd.	189,668	—	2
50. Kerr Steamship Co., Inc.	10,824	—	1
51. Klaveness Line	20,107	—	1
52. Knutsen Line	137,603	—	2
53. Lines Service Steve. Inc.	—	—	1
54. Luckenbach SS Co., Inc.	92,124	—	1
55. Maersk Line Agency	42,564	—	1
56. Marine Terminals Corp.	470,856	—	5
57. Marine Terminals Corp. of L. A.	750,505	—	8
58. Matson Navigation Company	2,801,018	1,788	46
59. Matson Terminals, Inc.	—	—	1
60. Metropolitan Steve. Co.	1,934,256	—	20
61. Mitsubishi Shipping Co., Ltd.	19,723	—	1
62. Mitsui Steamship Co., Ltd.	223,736	—	3
63. Mutual Terminals, Inc.	—	—	1
64. Nippon Yusen Kaisha	127,304	—	2
65. North German Lloyd	—	—	1
66. The Oceanic Steamship Co.	—	—	1
67. Ocean Terminals	—	—	1
68. Fred Olsen Line Agency, Ltd.	198,448	—	2
69. Olympia Stevedoring Co.	21,164	—	1
70. Olympic-Griffiths Lines, Inc.	—	—	1
71. Olympic Peninsula Steve. Co.	28,656	—	1
72. Olympic Steamship Co., Inc.	—	—	1

(Exh. 41, 3-5 of Att.)

537a

Exhibit 41

	Company	Tonnage	Personnel	Votes
	73. Oregon Stevedoring Co., Inc.	66,476	—	1
	74. Osaka Shosen Kaisha	—	—	1
[4]	75. Outer Harbor Dock & Wharf, Inc.	—	—	1
	76. Overseas Shipping Co.	179,658	—	2
	77. Pacific Atlantic SS Co.	—	—	1
	78. Pacific Australia Direct Line	—	—	1
	79. Pacific Far East Line, Inc.	569,836	849	14
	80. Pacific Islands Transport Line	35,388	—	1
	81. Pacific Oriental Terminal	—	—	1
	82. Pacific Orient Express Line	109,587	—	2
	83. Pacific Ports Service Co.	—	—	1
	84. Pacific Republics Line	198,185	317	5
	85. Panama Pacific Line	—	—	1
	86. Parr-Richmond Terminal Co.	338,197	—	4
	87. Pope & Talbot, Inc.	413,123	376	8
	88. Portland Stevedoring Co.	684,379	—	7
	89. Rothschild-International Steve. Co.	945,597	—	10
	90. Rothschild's Alaska Steve. Co., Inc.	—	—	1
	91. Royal Mail Lines, Ltd.	132,945	—	2
	92. Salmon Terminals	—	—	1
	93. The San Francisco Steve. Co., Inc.	—	—	1
	94. Schirmer Stevedore Co., Ltd.	11,981	—	1
	95. Scrap Loaders, Inc.	—	—	1
	96. Seaboard Stevedoring Corp.	158,416	—	2
	97. Seattle Bulk Loading Terminal, Inc.	260,291	—	3
	98. Seattle Stevedore Co.	920,484	—	10
[5]	99. C. F. Sharp & Co., Inc.	—	—	1
	100. Shinnihon Steamship Co.	—	—	1
	101. Star Terminal Co., Inc.	—	—	1
	102. States Marine Lines	767,634	—	8
	103. States Steamship Co.	454,849	653	11
	104. Stockton Bulk Terminal Co.	—	—	1
	105. Stockton Stevedore Co.	—	—	1
	106. Tacoma Stevedore & Terminal Co.	—	—	1
	107. Tait Stevedoring Co., Inc.	74,029	—	1
	108. Transpacific Trans. Co.	461,541	—	5
	109. Twin Harbor Steve. & Tug Co.	55,036	—	1
	110. Union SS Co. of N. Z., Ltd.	25,310	—	1
	111. Washington Stevedoring Co.	31,234	—	1
	112. West Coast Steamship Co.	—	161	2

(Exh. 41, 5 of Att., Exh. 46, 1)
538a

Exhibit 46

Company	Tonnage	Personnel	Votes
113. West Coast Terminals Co. of California	—	—	1
114. Westfal-Larsen Co. Line	137,509	—	2
115. Westfall Stevedore Co.	—	—	1
116. Weyerhaeuser Steamship Co.	324,560	152	5
117. Willapa Harbor Steve. Co.	14,397	—	1
118. Williams, Dimond & Co.	—	—	1
119. Yerba Buena Corp.	8,580	—	1
120. Zidell Docks, Inc.	117,048	—	2
TOTAL	28,005,687	7,505	433

Exhibit 46

[1] PACIFIC MARITIME ASSOCIATION
16 California Street
Phone DOuglas 2-7973
San Francisco 11, Cal.

March 3, 1960

To Members:

For your information and guidance, we are attaching a revised up-to-date membership list of Pacific Maritime Association, which was certified to the Board of Directors at the meeting held on February 24, 1960.

We also enclose a list of the Board of Directors elected to serve for the year 1960 and their appointed alternates. Members of the Board have been duly elected in accordance with Article V of the By-Laws of this Association.

By letter of February 16, 1960, the membership was notified of the special meeting to be held on Wednesday, February 24, 1960 in lieu of the annual meeting of the members of Pacific Maritime Association, and Item No. 6

(Exh. 46, 1)

539a

Exhibit 46

referred to the proposed amendments to the By-Laws, which would be voted upon at this special meeting of the membership.

Proposed amendments to Section 1, Article VII of the By-Laws were discussed. It was moved, and seconded that the proposed amendment, designated No. 1 be approved. The motion was approved by vote of members holding two-thirds of the voting power of the entire membership. The vote was as follows: 286 — yes, 110 — absent.

The proposed amendment to Section 5 of Article XI of the By-Laws was discussed. On motion that the amendment be approved, the motion was approved by vote of members holding two-thirds of the voting power of the entire membership. The vote was as follows: 279 — yes, 7 — no, 110 — absent.

These two amendments having been approved by the necessary two-thirds of the voting power of the membership now become effective and the enclosed copies are as approved by the membership of this Association.

Very truly yours,

J. A. ROBERTSON
Secretary

JAR:vs
Encl.

Exhibit 46
(Attached to Exhibit 46)

[1] PACIFIC MARITIME ASSOCIATION

MEMBERSHIP ROSTER

Name and Address of Member Co.	Group(s) *	AREA			
		So. Calif.	No. Calif.	Oregon & Col. River	Wash- ington
1. Alaska Steamship Company Pier 42 Seattle 4, Washington	d, e				x
2. Alaska Terminal & Steve. Pier 42 Seattle 4, Washington	g, h			x	x
3. Albin Stevedore Company 3200 - 26th Ave., S. W. Seattle, Washington	g				x
4. Albina Dock Company 710 Lewis Building Portland 4, Oregon	h			x	
5. American-Hawaiian Steamship Co. 90 Broad St. New York 4, N. Y.					
6. American Mail Line, Ltd. 740 Stuart Building Seattle, Washington	e, g, h	x	x	x	x
7. American President Lines 311 California St. San Francisco, Calif.	a, e, h	x	x		

8.	Anacortes Stevedoring Co., Inc. 320 Commercial Ave. Anacortes, Washington	g					x
9.	Associated-Banning Co. P. O. Box 816 Wilmington, Calif.	g, h	x	x			
10.	Balfour, Guthrie & Co. Ltd. 351 California St. San Francisco, Calif.	f	x	x	x	x	x
11.	Barber Steamship Lines, Inc. (Overseas Shipping Co., Agts.) 310 Sansome St. San Francisco, Calif.	f	x	x			
[2] 12.	Bellingham Stevedoring Co. 802 State St. Bellingham, Washington	g				x	x
13.	The Blue Star Line, Inc. 1801 Northern Life Tower Seattle 1, Washington	f	x	x	x		x
14.	Brady-Hamilton Stevedore Co. 1725 N.W. 14th Ave. Portland 9, Oregon	g				x	
15.	Bulk Handlers, Inc. Pier 14 San Francisco, Calif.	g		x			
16.	California Stevedore & Ballast Co. 160 Folsom St. San Francisco, Calif.	g, h		x			

Name and Address of Member Co.	AREA				
	Group(s) *	So. Calif.	No. Calif.	Oregon & Col. River	Wash- ington
17. Canadian Gulf Line, Ltd. Pier 22 San Francisco 5, Calif.	f	x	x		
18. W. R. Chamberlin & Co. 206 Portland Trust Bldg. Portland 4, Oregon	c			x	
19. Coast Stevedore Co. 914 Water St. P. O. Box 997 South Bend, Washington	g, h				x
20. Coastwise Line 141 Battery St. San Francisco, Calif.	c, d, e	x	x	x	x
21. Columbia Basin Terminals 1788 N.W. Front Portland 9, Oregon	h			x	
22. Consolidated Steve. Co. 268 Market St. San Francisco, Calif.	g		x		
[3] 23. Crescent Wharf & Warehouse Co. 272 South Fries Ave. Wilmington, Calif.	g, h	x			
24. The East Asiatic Co., Inc. 465 California St. San Francisco, Calif.	f	x	x	x	x

25. Encinal Terminals P. O. Drawer A Alameda, Calif.	h		x				
26. Everett Stevedoring Co. 1006 Hewitt Ave. Everett, Washington	g				x		
27. Fern-Ville Lines (Overseas Shipping Co., Agts.) 310 Sansome St. San Francisco, Calif.	f	x	x				
28. French Line (General SS Corp., Agts.) 432 California St. San Francisco, Calif.	f	x	x	x	x	x	
29. Furness, Withy & Co., Ltd. 310 Sansome St. San Francisco, Calif.	f	x	x	x	x	x	
30. General Stevedore & Ballast Co. 224 Spear St. San Francisco, Calif.	g		x				
31. Grace Line Inc. 2 Pine St. San Francisco, Calif.	e, g, h	x	x	x	x	x	
32. Griffiths & Sprague Stevedoring Co. Pier 50 Seattle 4, Washington	g				x		

Name and Address of Member Co.		A R E A				
		Group(s) *	So. Calif.	No. Calif.	Oregon & Col. River	Wash- ington
33.	Holland-America Line 324 Sansome St. San Francisco, Calif.	f	x	x	x	x
[4]	34. Howard Terminal 95 Market St. Oakland 4, Calif.		g, h		x	
35.	Humboldt Stevedore Co. Ltd. Foot of Washington St. Eureka, Calif.		g		x	
36.	Independent Stevedore Co. 210 N. Broadway, Box 1019 Coos Bay, Oregon		g			x
37.	Indies Terminal Co. P. O. Box 1147 Wilmington, Calif.		h	x	x	
38.	International Terminals Inc. 812 Wilshire Blvd. Los Angeles, Calif.		h	x		
39.	Interocean Line (Westfal Larsen Co., Inc., Agts.) 310 Sansome St. San Francisco, Calif.	f	x	x	x	x
40.	Interstate Carloading Co. 1214 N. W. Front Ave. Portland 9, Oregon		h		x	

545a

Exhibit 46

41.	Italian Line (General SS Corp., Ltd., Agts.) 432 California St. San Francisco, Calif.	f	x	x	x	x
42.	Johnson Line (Grace Line Inc., Gen. Agts.) 2 Pine St. San Francisco, Calif.	f	x	x	x	x
43.	Jones Stevedoring Co. 311 California St. San Francisco, Calif.	g	x	x		
44.	W. J. Jones & Son, Inc. 817 Board of Trade Bldg. Portland, Oregon	g			x	
45.	Kerr Steamship Co., Inc. 350 California St. San Francisco 4, Calif.	f	x	x	x	x
[5] 46.	Klaveness Line (Overseas Shipping Co., Agts.) 310 Sansome St. San Francisco, Calif.	f	x	x	x	x
47.	Knutsen Line (Bakke Steamship Corp., Agts.) 311 California St. San Francisco, Calif.	f	x	x	x	x
48.	Lines Service Stevedoring, Inc. 819-A Alabama San Francisco, Calif.	g		x		

Name and Address of Member Co.	A R E A					Wash- ington
	Group(s) *	So. Calif.	No. Calif.	Oregon & Col. River		
49. Luckenbach Steamship Co., Inc. 100 Bush St. San Francisco, Calif.	b	x	x	x	x	x
50. M & R Services, Inc. P. O. Box 112 Pittsburg, Calif.	g, h			x		
51. Maersk Line Agency 510 West Sixth St. Los Angeles, Calif.	f		x			
52. Marine Terminals Corp. 261 Steuart St. San Francisco, Calif.	g, h	x		x		
53. Marine Terminals Corp. of Los Angeles 298 So. Pico Ave. P. O. Box 1068 Long Beach, Calif.	g, h		x			
54. Matson Navigation Co. 215 Market St. San Francisco, Calif.	a, e	x	x	x	x	x
55. Matson Terminals, Inc. 215 Market St. San Francisco, Calif.	g, h	x	x	x	x	x

Exhibit 46

56.	Metropolitan Steve. Co. 211 Marine Ave. P. O. Box 547 Wilmington, Calif.	g	x				
[6]	57. Mutual Stevedoring Co. 289 Steuart St. San Francisco 5, Calif.	g, h		x			
58.	Mutual Terminals, Inc. 289 Steuart St. San Francisco 5, Calif.	g, h		x			
59.	Oceanic Steamship Co. 215 Market St. San Francisco, Calif.	a, e	x	x	x	x	x
60.	Ocean Terminals 55 Sacramento St. San Francisco 4, Calif.	h	x	x	x		
61.	Fred. Olsen Line Agency Ltd. 465 California St. San Francisco, Calif.	f	x	x	x	x	x
62.	Olympia Stevedoring Co. P. O. Box 192 Olympia, Washington	g				x	
63.	Olympic-Griffiths Lines, Inc. 1000 - 2nd Ave. Seattle 4, Washington	c	x	x	x	x	x
64.	Olympic Peninsula Steve. 2247 East Marginal Way Seattle 4, Washington	g				x	

Name and Address of Member Co.		AREA				
		Group(s) *	So. Calif.	No. Calif.	Oregon & Col. River	Wash- ington
65.	Olympic Steamship Co., Inc. 1000 - 2nd Ave. Seattle 4, Washington	e, g, h	x	x	x	x
66.	Oregon Stevedoring Co., Inc. 3630 N. W. Front Ave. Portland 10, Oregon	g			x	
67.	Outer Harbor Dock & Wharf, Inc. 272 South Fries Ave. Wilmington, Calif.	g, h	x			
68.	Overseas Shipping Co. 310 Sansome St. San Francisco, Calif.	f, h	x	x	x	x
[7]	69. Pacific Atlantic Steamship Co. 320 California St. San Francisco, Calif.	b, e	x	x	x	x
70.	Pacific Australia Direct Line (General SS Corp., Ltd., Agts.) 432 California St. San Francisco, Calif.	f	x	x	x	x
71.	Pacific Far East Line, Inc. 141 Battery St. San Francisco, Calif.	e	x	x	x	x
72.	Pacific Island Transport Lines (General SS Corp., Ltd., Agts.) 432 California St. San Francisco, Calif.	f	x	x	x	x

549a

Exhibit 46

73.	Pacific Oriental Terminal 351 California St. San Francisco, Calif.	h		x					
74.	Pacific Orient Express Line (General SS Corp., Ltd., Agts.) 432 California St. San Francisco, Calif.	f		x	x	x	x	x	
75.	Pacific Ports Service Co. 2 Pine St. San Francisco 11, Calif.	h		x	x				
76.	Pacific Republics Line. (Moore-McCormack Lines, Inc.) 214 California St. San Francisco, Calif.	e		x	x	x	x	x	
77.	Panama Pacific Line 141 Battery St. San Francisco, Calif.	h		x					
78.	Parr-Richmond Terminal Co. 1 Drumm St. San Francisco, Calif.	g, h			x				
79.	Pope & Talbot, Inc. 100 Bush St. San Francisco 4, Calif.	b, g, h		x	x	x	x	x	
[8]	80. Portland Stevedoring Co. 1320 S. W. Broadway Portland, Oregon	g				x			

Name and Address of Member Co.	Group(s) *	AREA				Wash-ingt
		So. Calif.	No. Calif.	Oregon & Col. River		
81. Rothschild-International Stevedoring Co. 2247 East Marginal Way Seattle 4, Washington	g				x	
82. Rothschild's Alaska Stevedoring Co., Inc. 2247 East Marginal Way Seattle 4, Washington	g				x	
83. Royal Mail Lines, Ltd. 1731 Exchange Bldg. Seattle 4, Washington	f	x	x	x	x	
84. Salmon Terminals Pier 24 North Seattle 4, Washington	h				x	
85. The San Francisco Steve. Co. 35 Brannan St. San Francisco, Calif.	g		x			
86. Schirmer Steve. Co., Ltd. 55 Sacramento St. San Francisco, Calif.	g		x			
87. Seaboard Steve. Corp. 2 Pine St. San Francisco, Calif.	g	x	x			

	88.	Seattle Bulk Loading Terminal, Inc. Pier 50, Room 25 Seattle, Washington	g, h	x				
	89.	Seattle Stevedore Co. 1200 Westlake Ave., N. Seattle 9, Washington	g, h		x			
	90.	Shaffer Terminals P. O. Box 1157 Tacoma, Washington	h		x			
	91.	C. F. Sharp & Co., Inc. Central Tower, 703 Market St. San Francisco, Calif.	f	x	x			
[9]	92.	Star Terminal Co., Inc. Pier 22 San Francisco 5, Calif.	h	x	x			
	93.	States Marine Lines 241 Sansome St. San Francisco, Calif.	b, e	x	x	x	x	x
	94.	States Steamship Co. 320 California St. San Francisco, Calif.	e, h	x	x	x	x	x
	95.	Tait Stevedoring Co., Inc. 2247 East Marginal Way Seattle 4, Washington	g				x	
	96.	Transpacific Trans. Co. 351 California St. San Francisco, Calif.	f	x	x	x	x	x

Name and Address of Member Co.	Group(s) *	A R E A				
		So. Calif.	No. Calif.	Oregon & Col. River	Wash- ington	
97. Twin Harbor Stevedoring & Tug. Co. P. O. Box 716 Hoquiam, Washington	g				x	
98. Union SS Co. of N. Z. Ltd. 230 California St. San Francisco, Calif.	f	x	x	x	x	
99. Washington Stevedoring Co. 36 West Stacy St. Seattle 4, Washington	g				x	
100. West Coast Steamship Co. 601 Board of Trade Bldg. Portland 4, Oregon	e			x		
101. West Coast Terminals Co. of California P. O. Box 2310, Station B San Francisco, Calif.	g, h	x	x			
102. Westfal-Larsen Co. Line (General SS Corp., Ltd., Agts.) 432 California St. San Francisco, Calif.	f	x	x	x	x	
103. Weyerhaeuser Steamship Co. 141 Battery St. San Francisco, Calif.	b	x	x	x	x	
[10] 104. Willapa Harbor Steve. Co. Raymond, Washington	g				x	

105. Williams, Dimond & Co. 530 W. 6th St. Los Angeles, Calif.	f, h	x	x	x	x
106. Yerba Buena Corp. 55 Sacramento St. San Francisco, Calif.	g, h		x		
107. Zidell Docks, Inc. 3121 S. W. Moody St. Portland 1, Oregon	g			x	

GROUPS(s) *

- | | |
|----------------------------|-----------------------|
| a. Passenger Line Group | e. Offshore Group |
| b. Intercoastal Line Group | f. Foreign Line Group |
| c. Coastwise Group | g. Stevedore Group |
| d. Alaska Group | h. Terminal Group |

553a

Exhibit 46

(Exh. 46, 10 of Att.)

MEMBERSHIP ROSTER FOR 1960

(Exh. 47, 1)

554a

Exhibit 47

[1] **PACIFIC MARITIME ASSOCIATION**
16 California Street
Phone DOuglas 2-7973
San Francisco 11, Cal.

July 3, 1961

To MEMBERS.

For your information and guidance, we are attaching a Membership Roster of Pacific Maritime Association which was certified to the Board of Directors at the annual meeting held on March 9, 1961.

It would be appreciated if each member would check his listing to see if it is correct and current, both as to membership groupings and areas of operation. Also, please advise if we have listed your address incorrectly.

Also enclosed is listing of the members of the Board of Directors and their appointed alternates who are serving for the year 1961.

J. A. ROBERTSON,
Secretary.

JAR:ah
Enclosures

(Exh. 47, 1 of Att.)

555a

Exhibit 47

(Attached to Exhibit 47)

[1] PACIFIC MARITIME ASSOCIATION
16 California Street
Phone DOuglas 2-7973
San Francisco 11, Cal.

June 30, 1961

ERRATA SHEET

PACIFIC MARITIME ASSOCIATION

MEMBERSHIP ROSTER

Name & Address of Member Co.

5. American Hawaiian
SS Co. *Delete.*
55. M & R Services, Inc. *Change in Name:*
From: M & R Services, Inc.
To: Diablo Seaway
Terminals
97. Seattle Stevedore Co. *Change of Address:*
From: 1200 Westlake Ave. N.
To: 2900 - 11th Ave. S.W.
Seattle 4, Washington

Name and Address of Member Co.	AREA				
	Group(s) *	So. Calif.	No. Calif.	Oregon & Col. River	Wash- ington

[1] PACIFIC MARITIME ASSOCIATION

MEMBERSHIP ROSTER

1. Alaska Steamship Company Pier 42 Seattle 4, Washington	d, e			x	
2. Alaska Terminal & Steve. Pier 42 Seattle 4, Washington	g, h			x	
3. Albin Stevedore Company 3200 - 26th Ave., S.W. Seattle, Washington	g				x
4. Albina Dock Company 710 Lewis Building Portland 4, Oregon	h			x	
5. American-Hawaiian SS Co. 360 Lexington Avenue New York 17, N. Y.					
6. American Mail Line, Ltd. 1010 Washington Bldg. Seattle, Washington	e, g, h	x	x	x	x
7. American President Lines 311 California Street San Francisco, California	a, e, h	x	x		

Exhibit 47

8.	Anacortes Stevedoring Co. 320 Commercial Ave. Anacortes, Washington	g			x
9.	Associated-Banning Co. P. O. Box 816 Wilmington, Calif.	g, h	x	x	
10.	Balfour, Guthrie & Co., Ltd. 255 California Street San Francisco, Calif.	f	x	x	x
11.	Barber Steamship Lines, Inc. (Overseas Shipping Co., Agts.) 310 Sansome Street San Francisco, Calif.	f	x	x	
[2] 12.	Bellingham Stevedoring Co. 802 State St. Bellingham, Washington	g			x
13.	The Blue Star Line, Inc. 1801 Northern Life Tower Seattle 1, Washington	f	x	x	x
14.	Brady-Hamilton Stevedore Co. 1725 N. W. 14th Ave. Portland 9, Oregon	g			x
15.	Bulk Handlers, Inc. Pier 32 San Francisco, Calif.	g	x	x	
16.	California Stevedore & Ballast Co. 160 Folsom St. San Francisco, Calif.	g, h	x		

Name and Address of Member Co.	A R E A				
	Group(s) *	So. Calif.	No. Calif.	Oregon & Col. River	Wash- ington
17. Calmar Steamship Corporation 25 Broadway New York 4, N. Y.	b	x	x	x	x
18. Canadian Gulf Line, Ltd. Pier 22 San Francisco 5, Calif.	f	x	x		
19. W. R. Chamberlin & Co. 206 Portland Trust Bldg. Portland 4, Oregon	e			x	
20. Coast Stevedore Co. 914 Water St. P. O. Box 997 South Bend, Washington	g, h				x
21. Coastwise Line 141 Battery St. San Francisco, Calif.	c, d, e	x	x	x	
22. Columbia Basin Terminals 1788 N. W. Front Portland 9, Oregon	h			x	
23. Consolidated Steve. Co. 268 Market St. San Francisco, Calif.	g		x		
24. Crescent Wharf & Warehouse Co. 272 South Fries Ave. Wilmington, Calif.	g, h		x		

25.	Daido Kaiun Kaisha (General SS Corp., Ltd., Agts.) 432 California St. San Francisco, Calif.	f	x	x	x	x	x
26.	The East Asiatic Co., Inc. 465 California St. San Francisco, Calif.	f	x	x	x	x	x
27.	Encinal Terminals P. O. Drawer A Alameda, Calif.	g, h		x			
28.	Everett Stevedoring Co. 1006 Hewitt Ave. Everett, Washington	g				x	
29.	Fern-Ville Lines (Overseas Shipping Co., Agts.) 310 Sansome St. San Francisco, Calif.	f	x	x	x	x	
30.	Flota Mercante Grancolobiana, S.A. (Balfour, Guthrie & Co., Ltd., Agts.) 255 California St. San Francisco, Calif.	f	x	x	x	x	x
31.	French Line (General SS Corp., Ltd., Agts.) 432 California St. San Francisco, Calif.	f	x	x	x	x	x
32.	Furness, Withy & Co., Ltd. 310 Sansome St. San Francisco, Calif.	f	x	x	x	x	x

Exhibit 47

Name and Address of Member Co.		A R E A				
		Group(s) *	So. Calif.	No. Calif.	Oregon & Col. River	Wash- ington
33.	General Stevedore & Ballast Co. 224 Spear St. San Francisco, Calif.	g		x		
34.	Grace Line, Inc. 2 Pine St. San Francisco, Calif.	e, g, h	x	x	x	x
35.	Griffiths & Sprague Stevedoring Co. Pier 50 Seattle 4, Washington					
36.	Hamburg-Amerika Line (Balfour, Guthrie & Co., Ltd., Agts.) 255 California St. San Francisco, Calif.	f	x	x	x	x
[4]	37. Holland-America Line 324 Sansome St. San Francisco, Calif.	f	x	x	x	x
38.	Howard Terminal 95 Market St. Oakland 4, Calif.	g, h		x		
39.	Humboldt Stevedore Co., Ltd. Foot of Washington St. Eureka, Calif.	g		x		
40.	Iino Lines (Bakke Steamship Corp., Agts.) 311 California St. San Francisco 4, Calif.	f	x	x	x	x

Exhibit 47

41. Independent Stevedore Co. 210 N. Broadway, Box 1019 Coos Bay, Oregon	g		x			
42. Indies Terminal Co. P. O. Box 1147 Wilmington, Calif.	h	x	x			
43. International Terminals, Inc. 812 Wilshire Blvd. Los Angeles, Calif.	h	x				
44. Interocean Line (Westfal Larsen Co., Inc., Agts.) 310 Sansome St. San Francisco, Calif.	f	x	x	x	x	x
45. Interstate Carloading Co. 1214 N. W. Front Ave. Portland 9, Oregon	h			x		
46. Italian Line (General SS Corp., Ltd., Agts.) 432 California St. San Francisco, Calif.	f	x	x	x	x	x
47. Johnson Line (Grace Line, Inc., Gen. Agts.) 2 Pine St. San Francisco, Calif.	f	x	x	x	x	x
48. Jones Stevedoring Co. 311 California St. San Francisco, Calif.	g	x	x			

Name and Address of Member Co.		A R E A				
		Group(s) *	So. Calif.	No. Calif.	Oregon & Col. River	Wash- ington
49.	W. J. Jones & Son, Inc. 817 Board of Trade Bldg. Portland, Oregon	g			x	
[5]	50. Kawasaki Kisen Kaisha, Ltd. (Kerr SS Co., Inc., Gen. Agts.) 350 California St. San Francisco, Calif.	f	x	x	x	x
51.	Kerr Steamship Co., Inc. 350 California St. San Francisco 4, Calif.	f	x	x	x	x
52.	Klaveness Line (Overseas Shipping Co., Agts.) 310 Sansome St. San Francisco, Calif.	f	x	x	x	x
53.	Knutsen Line (Bakke Steamship Corp., Agts.) 311 California St. San Francisco, Calif.	f	x	x	x	x
54.	Lines Service Stevedoring 819-A Alabama San Francisco, Calif.	g			x	
55.	M & R Services, Inc. P. O. Box 112 Pittsburg, Calif.	g, h			x	

56.	Maersk Line Agency 510 West Sixth St. Los Angeles, Calif.	f	x				
57.	Marine Terminals Corp. 261 Steuart St. San Francisco, Calif.	g, h	x	x			
58.	Marine Terminals Corp. of Los Angeles 298 So. Pico Ave. P. O. Box 1068 Long Beach, Calif.	g, h	x				
59.	Matson Navigation Company 215 Market St. San Francisco, Calif.	a, e	x	x	x	x	x
60.	Matson Terminals, Inc. 480 Main St. San Francisco, Calif.	g, h	x	x	x	x	x
61.	Metropolitan Steve. Co. 211 Marine Avenue P. O. Box 547 Wilmington, Calif.	g	x				
[6]	62. Mitsubishi Shipping Co., Ltd. (Oceanic Agencies, Inc., Gen. Agts.) 310 Sansome St. San Francisco, Calif.	f	x	x	x	x	x
	63. Mitsui Steamship Co., Ltd. (Mitsui Line Agencies, Inc.) 201 Pine St. San Francisco 4, Calif.	f	x	x	x	x	x

Exhibit 47

Name and Address of Member Co.	Group(s) *	A R E A			
		So. Calif.	No. Calif.	Oregon & Col. River	Wash- ington
64. Mutual Terminals, Inc. 289 Steuart St. San Francisco 5, Calif.	g, h		x		
65. Nippon Yusen Kaisha 311 California St. San Francisco, Calif.	f	x	x	x	x
66. North German Lloyd (Balfour, Guthrie & Co., Ltd., Agts.) 255 California St. San Francisco, Calif.	f	x	x	x	x
67. Oceanic Steamship Co. 215 Market St. San Francisco, Calif.	a, e	x	x	x	x
68. Ocean Terminals 55 Sacramento St. San Francisco 4, Calif.	h	x	x		
69. Fred Olsen Line Agency, Ltd. 465 California St. San Francisco, Calif.	f	x	x	x	x
70. Olympia Stevedoring Co. P. O. Box 192 Olympia, Washington	g				x
71. Olympic-Griffiths Lines, Inc. 1000 - 2nd Ave. Seattle 4, Washington	c	x	x	x	x

Exhibit 47

72.	Olympic Peninsula Steve. 2247 East Marginal Way Seattle 4, Washington	g			x		
73.	Olympic Steamship Co., Inc. 1000 - 2nd Ave. Seattle 4, Washington	e, g, h	x	x	x	x	
[7]	74. Oregon Steve. Co., Inc. 3630 N. W. Front Ave. Portland 10, Oregon	g			x		
75.	Outer Harbor Dock & Wharf, Inc. 272 South Fries Ave. Wilmington, Calif.	g, h	x				
76.	Overseas Shipping Co. 310 Sansome St. San Francisco, Calif.	f, h	x	x	x	x	x
77.	Pacific Atlantic Steamship 320 California St. San Francisco, Calif.	b, e	x	x	x	x	x
78.	Pacific Australia Direct Line (General SS Corp., Ltd., Agts.) 432 California St. San Francisco, Calif.	f	x	x	x	x	x
79.	Pacific Far East Line, Inc. 141 Battery St. San Francisco, Calif.	e	x	x	x	x	x
80.	Pacific Island Transport Lines. (General SS Corp., Ltd., Agts.) 432 California St. San Francisco, Calif.	f	x	x	x	x	x

Name and Address of Member Co.	Group(s) *	A R E A				Wash- ington
		So. Calif.	No. Calif.	Oregon & Col. River		
81. Pacific Oriental Terminal 351 California St. San Francisco, Calif.	h		x			
82. Pacific Orient Express Line (General SS Corp., Ltd., Agts.) 432 California St. San Francisco, Calif.	f	x	x	x	x	
83. Pacific Ports Service Co. 2 Pine St. San Francisco 11, Calif.	h	x	x			
84. Pacific Republics Line (Moore-McCormick Lines, Inc.) 214 California St. San Francisco, Calif.	e	x	x	x	x	x
85. Panama Pacific Line 141 Battery St. San Francisco, Calif.	h	x				
[8] 86. Parr-Richmond Terminal 1 Drumm St. San Francisco, Calif.	g, h		x			
87. Pope & Talbot, Inc. 100 Bush St. San Francisco 4, Calif.	b, g, h	x	x	x	x	

88.	Portland Stevedoring Co. 1320 S. W. Broadway Portland, Oregon	g		x		
89.	Rothschild-International Stevedoring Co. 2247 East Marginal Way Seattle 4, Washington	g			x	
90.	Rothschild's Alaska Stevedoring Co., Inc. 2247 East Marginal Way Seattle 4, Washington	g			x	
91.	Royal Mail Lines, Ltd. 1731 Exchange Bldg. Seattle 4, Washington	f	x	x	x	x
92.	Salmon Terminals Pier 24 North Seattle 4, Washington	h			x	
93.	The San Francisco Steve. Company 35 Brannan St. San Francisco, Calif.	g		x		
94.	Schirmer Steve. Co., Ltd. 55 Sacramento St. San Francisco, Calif.	g		x		
95.	Seaboard Steve. Corp. 2 Pine St. San Francisco, Calif.	g	x	x		

Name and Address of Member Co.		A R E A				
		Group(s) *	So. Calif.	No. Calif.	Oregon & Col. River	Wash- ington
96.	Seattle Bulk Loading Terminal, Inc. Pier 50, Room 28 Seattle, Washington	g, h				x
97.	Seattle Stevedore Co. 1200 Westlake Ave., N. Seattle 9, Washington	g, h				x
[9]	98. Shaffer Terminals P. O. Box 1157 Tacoma, Washington	h				x
99.	C. F. Sharp & Co., Inc. Central Tower 703 Market St. San Francisco, Calif.	f	x	x		
100.	Shinnihon Steamship Co., Ltd. (Balfour, Guthrie & Co., Ltd., Agts.) 255 California St. San Francisco, Calif.	f	x	x	x	x
101.	Star Terminal Co., Inc. Pier 22 San Francisco, Calif.	h	x	x		
102.	States Marine Lines 241 Sansome St. San Francisco, Calif.	b, e	x	x	x	x

103.	States Steamship Co. 320 California St. San Francisco, Calif.	e, h	x	x	x	x
104.	Tait Stevedoring Co., Inc. 2247 East Marginal Way Seattle 4, Washington	g			x	
105.	Transpacific Trans. Co. 351 California St. San Francisco, Calif.	f	x	x	x	x
106.	Twin Harbor Stevedoring & Tug Co. P. O. Box 716 Hoquiam, Washington	g			x	
107.	Union SS Co. of N. Z., Ltd. 230 California St. San Francisco, Calif.	f	x	x	x	x
108.	Washington Stevedoring Co. 36 West Stacy St. Seattle 4, Washington	g			x	
[10] 109.	West Coast Steamship Co. 601 Board of Trade Bldg. Portland 4, Oregon	e			x	
110.	West Coast Terminals Co. of California P. O. Box 2310, Station B San Francisco, Calif.	g, h	x	x		
111.	Westfal-Larsen Co. Line (General SS Corp., Ltd., Agts.) 432 California St. San Francisco, Calif.	f	x	x	x	x

Name and Address of Member Co.	A R E A				
	Group(s) *	So. Calif.	No. Calif.	Oregon & Col. River	Wash- ington
112. Weyerhaeuser Steamship Company 141 Battery St. San Francisco, Calif.	b	x	x	x	x
113. Willapa Harbor Steve. Co. Raymond, Washington	g				x
114. Williams, Dimond & Co. 530 W. 6th St. Los Angeles, Calif.	f, h	x	x	x	x
115. Yerba Buena Corp. 55 Sacramento St. San Francisco, Calif.	g, h		x		
116. Zidell Docks, Inc. 3121 S. W. Moody St. Portland 1, Oregon	g			x	

GROUP(s) *

- | | |
|----------------------------|-----------------------|
| a. Passenger Line Group | e. Offshore Group |
| b. Intercoastal Line Group | f. Foreign Line Group |
| c. Coastwise Group | g. Stevedore Group |
| d. Alaska Group | h. Terminal Group |

MEMBERSHIP ROSTER FOR 1961

Exhibit 48

[1] PACIFIC MARITIME ASSOCIATION
16 California Street
Phone Douglas 2-7973
San Francisco 11, Cal.

April 25, 1962

ERRATA SHEET

PACIFIC MARITIME ASSOCIATION

MEMBERSHIP ROSTER

Name and Address of Member Co.	AREA				
	Group(s) *	So. Calif.	No. Calif.	Oregon & Col. River	Wash- ington
Capitol Stevedore Co. 2900 - 11th Ave., SW Seattle 4, Washington	g				x
Crown Zellerbach Corporation 1 Bush Street San Francisco, California	h		x		
Twin Harbors Terminal Company Pier C, Berth 20 Long Beach, California	h		x		

(The above companies were admitted to membership in the Association since the Membership Roster was prepared.)

571a

(Exh. 48, 1)

[1] PACIFIC MARITIME ASSOCIATION

MEMBERSHIP ROSTER

Name and Address of Member Co.	AREA				
	Group(s) *	So. Calif.	No. Calif.	Oregon & Col. River	Wash- ington
1. Alaska Steamship Company Pier 42 Seattle 4, Washington	d, e				x
2. Alaska Terminal & Steve. Pier 42 Seattle 4, Washington	g, h				x
3. Albin Stevedore Company 3200 - 26th Ave. S.W. Seattle, Washington	g				x
4. Albina Dock Company 710 Lewis Building Portland 4, Oregon	h			x	
5. American Mail Line, Ltd. 1010 Washington Bldg. Seattle, Washington	e, g, h	x	x	x	x
6. American President Lines 601 California Street San Francisco, California	a, e, h	x	x		
7. Anacortes Stevedoring Co. 320 Commercial Ave. Anacortes, Washington	g				x

8.	Associated Banning Co. P. O. Box 816 Wilmington, Calif.	g, h	x	x		
9.	Balfour, Guthrie & Co., Ltd. 255 California Street San Francisco, California	f	x	x	x	x
10.	Barber Steamship Lines, Inc. (Overseas Shipping Co., Agts.) 310 Sansome Street San Francisco, California	f	x	x		
11.	Bellingham Stevedoring Co. 802 State Street Bellingham, Washington	g			x	
12.	The Blue Star Line, Inc. 1801 Northern Life Tower Seattle 1, Washington	f	x	x	x	x
[2] 13.	Brady-Hamilton Stevedore Co. 1725 N. W. 14th Ave. Portland 9, Oregon	g			x	
14.	Bulk Handlers, Inc. Pier 32 San Francisco, California	g		x	x	
15.	California Stevedore & Ballast Co. 160 Folsom Street San Francisco, California	g, h		x		
16.	Calmar Steamship Corp. 25 Broadway New York 4, N. Y.	b	x	x	x	x

(Exh. 48, 2)

574a

Exhibit 48

Name and Address of Member Co.	AREA				
	Group(s) *	So. Calif.	No. Calif.	Oregon & Col. River	Wash- ington
17. Canadian Gulf Line, Ltd. Pier 22 San Francisco 5, Calif.	f	x	x		
18. W. R. Chamberlin & Co. 206 Portland Trust Bldg. Portland 4, Oregon	c			x	
19. Coast Stevedore Co. 914 Water Street P. O. Box 997 South Bend, Washington		g, h			x
20. Coastwise Line 601 Montgomery Street San Francisco, Calif.	c, d, e	x	x	x	x
21. Consolidated Steve. Co. 268 Market Street San Francisco, Calif.	g		x		
22. Crescent Wharf & Warehouse Co. 272 South Fries Avenue Wilmington, Calif.	g, h		x		
23. Daido Kaiun Kaisha (General SS Corp., Ltd., Agts.) 432 California Street San Francisco, Calif.	f	x	x	x	x

Exhibit 48

[3]	24. Diablo Seaway Terminals P. O. Box 112 Pittsburg, Calif.	g, h	x				
25.	The East Asiatic Co., Inc. 465 California Street San Francisco, Calif.	f	x	x	x	x	x
26.	Encinal Terminals P. O. Drawer A Alameda, Calif.	g, h		x			
27.	Everett Stevedoring Co. 1006 Hewitt Avenue Everett, Washington	g				x	
28.	Fern-Ville Lines (Overseas Shipping Co., Agts.) 310 Sansome Street San Francisco, Calif.	f	x	x	x		
29.	Flota Mercante Grancolobiana, S.A. (Balfour, Guthrie & Co., Ltd., Agts.) 255 California Street San Francisco, Calif.	f	x	x	x	x	x
30.	French Line (General SS Corp., Ltd., Agts.) 432 California Street San Francisco, Calif.	f	x	x	x	x	x
31.	Furness, Withy & Co., Ltd. 310 Sansome Street San Francisco, Calif.	f	x	x	x	x	x

Name and Address of Member Co.		AREA				
		Group(s) *	So. Calif.	No. Calif.	Oregon & Col. River	Wash- ington
32.	General Stevedore & Ballast Co. Pier 9 San Francisco, Calif.	g		x		
33.	Grace Line, Inc. 2 Pine Street San Francisco, Calif.	e, g, h	x	x	x	x
34.	Griffiths & Sprague Stevedoring Co. Pier 50 Seattle 4, Washington	g				x
35.	Hamburg-Amerika Line (Balfour, Guthrie & Co., Ltd., Agts.) 255 California Street San Francisco, Calif.	f	x	x	x	x
[4]	36. Holland-America Line 324 Sansome Street San Francisco, Calif.	f	x	x	x	x
37.	Howard Terminal 95 Market Street Oakland 4, Calif.	g, h		x		
38.	Humboldt Stevedore Co., Ltd. Foot of Washington Street Eureka, Calif.	g		x		
39.	Iino Lines (Bakke Steamship Corp., Agts.) 311 California Street San Francisco 4, Calif.	f	x	x	x	x

Exhibit 48

40. Independent Stevedore Co. 210 N. Broadway, Box 1019 Coos Bay, Oregon	g		x		
41. Indies Terminal Co. P. O. Box 1147 Wilmington, Calif.	h	x	x		
42. International Terminals, Inc. 812 Wilshire Blvd. Los Angeles, Calif.	h		x		
43. InterOcean Line (Westfal Larsen Co., Inc., Agts.) 310 Sansome Street San Francisco, Calif.	f	x	x	x	x
44. Interstate Carloading Co. 3838 N.W. Front Ave. Portland 10, Oregon	h			x	
45. Italian Line (General SS Corp., Ltd., Agts.) 432 California Street San Francisco, Calif.	f	x	x	x	x
46. Johnson Line (Grace Line, Inc., Gen. Agts.) 2 Pine Street San Francisco, Calif.	f	x	x	x	x
47. Jones Stevedoring Co. 211 Brannan Street San Francisco 7, Calif.	g	x	x		

Name and Address of Member Co.		AREA				
		Group(s) *	So. Calif.	No. Calif.	Oregon & Col. River	Wash- ingt.
[5]	48. W. J. Jones & Son, Inc. 817 Board of Trade Bldg. Portland, Oregon	g			x	
49.	Kawasaki Kisen Kaisha, Ltd. (Kerr Steamship Company, Inc., General Agents) 350 California Street San Francisco, Calif.	f	x	x	x	x
50.	Kerr Steamship Co., Inc. 350 California Street San Francisco 4, Calif.	f	x	x	x	x
51.	Klaveness Line (Overseas Shipping Co., Agts.) 310 Sansome Street San Francisco, Calif.	f	x	x	x	x
52.	Knutsen Line (Bakke Steamship Corp., Agts.) 311 California Street San Francisco, Calif.	f	x	x	x	x
53.	Lines Service Stevedoring 819-A Alabama San Francisco, Calif.	g		x		
54.	Luckenbach Steamship Co. 120 Wall Street New York 5, N. Y.					

55.	Maersk Line Agency 615 South Flower St. Los Angeles 17, California	f	x				
56.	Marine Terminals Corp. 261 Steuart Street San Francisco, Calif.	g, h	x	x			
57.	Marine Terminals Corp. of Los Angeles 298 So. Pico Ave. P. O. Box 1068 Long Beach, Calif.	g, h	x				
58.	Matson Navigation Company 215 Market Street San Francisco, Calif.	a, e	x	x	x	x	x
59.	Matson Terminals, Inc. 480 Main Street San Francisco, Calif.	g, h	x	x	x	x	x
[6] 60.	Metropolitan Steve. Co. 211 Marine Avenue P. O. Box 547 Wilmington, Calif.	g	x				
61.	Mitsubishi Shipping Co., Ltd. (Oceanic Agencies, Inc., Gen. Agts.) 310 Sansome Street San Francisco, Calif.	f	x	x	x	x	x
62.	Mitsui Steamship Co., Ltd. (Mitsui Line Agencies, Inc.) 201 Pine Street San Francisco 4, Calif.	f	x	x	x	x	x

Name and Address of Member Co.	AREA					(Exh. 48, 6)
	Group(s) *	So. Calif.	No. Calif.	Oregon & Col. River	Wash-ingt	
63. Mutual Terminals, Inc. 289 Steuart Street San Francisco, Calif.	g, h		x			
64. Nippon Yusen Kaisha 311 California Street San Francisco, Calif.	f	x	x	x	x	
65. North German Lloyd (Balfour, Guthrie & Co., Ltd., Agts.) 255 California Street San Francisco, Calif.	f	x	x	x	x	
66. The Oceanic Steamship Co. 215 Market Street San Francisco, Calif.	a, e	x	x	x	x	
67. Ocean Terminals 55 Sacramento Street San Francisco 4, Calif.	h	x	x			
68. Fred Olsen Line Agency, Ltd. 465 California Street San Francisco, Calif.	f	x	x	x	x	
69. Olympia Stevedoring Co. P. O. Box 192 Olympia, Washington	g				x	
70. Olympic-Griffiths Lines, Inc. 1000 - 2nd Avenue Seattle 4, Washington	c	x	x	x	x	

581a

Exhibit 48

	71. Olympic Peninsula Steve. 2247 East Marginal Way Seattle 4, Washington	g			x		
[7]	72. Olympic Steamship Co., Inc. 1000 - 2nd Avenue Seattle 4, Washington	e, g, h	x	x	x	x	x
	73. Oregon Steve. Co., Inc. 3630 N. W. Front Avenue Portland 10, Oregon	g			x		
	74. Osaka Shosen Kaisha (Williams, Dimond & Co., Agents) 530 West 6th Street Los Angeles 14, Calif.	f	x	x	x	x	x
	75. Outer Harbor Dock & Wharf. Inc. 272 South Fries Avenue Wilmington, Calif.	g, h	x				
	76. Overseas Shipping Co. 310 Sansome Street San Francisco, Calif.	f, h	x	x	x	x	x
	77. Pacific Atlantic Steamship 320 California Street San Francisco, Calif.	b, e	x	x	x	x	x
	78. Pacific Australia Direct Line (General SS Corp., Ltd., Agts.) 432 California Street San Francisco, Calif.	f	x	x	x	x	x
	79. Pacific Far East Line, Inc. 141 Battery Street San Francisco, Calif.	e	x	x	x	x	x

Name and Address of Member Co.	Group(s) *	AREA				
		f	So. Calif.	No. Calif.	Oregon & Col. River	Wash- ington
80. Pacific Islands Transport Line (General SS Corp., Ltd., Agts.) 432 California Street San Francisco, Calif.	x		x	x	x	x
81. Pacific Oriental Terminal 351 California Street San Francisco, Calif.	h			x		
82. Pacific Orient Express Line (General SS Corp., Ltd., Agts.) 432 California Street San Francisco, Calif.	f		x	x	x	x
83. Pacific Ports Service Co. 2 Pine Street San Francisco 11, Calif.	h		x	x		
[8] 84. Pacific Republics Line (Moore-McCormack Lines, Inc.) 214 California Street San Francisco, Calif.	e		x	x	x	x
85. Panama Pacific Line 141 Battery Street San Francisco, Calif.	h		x			
86. Parr-Richmond Terminals 1 Drumm Street San Francisco, Calif.	g, h			x		

87. Pope & Talbot, Inc. 100 Bush Street San Francisco, Calif.	b, g, h	x	x	x	x
88. Portland Stevedoring Co. 1320 S. W. Broadway Portland, Oregon	g		x		
89. Rothschild-International Stevedoring Co. 2247 East Marginal Way Seattle 4, Washington	g			x	
90. Rothschild's Alaska Stevedoring Co., Inc. 2247 East Marginal Way Seattle 4, Washington	g			x	
91. Royal Mail Lines, Ltd. 1731 Exchange Bldg. Seattle 4, Washington	f	x	x	x	x
92. Salmon Terminals Pier 24 North Seattle 4, Washington	h			x	
93. The San Francisco Steve. Co., Inc. 35 Brannan Street San Francisco 7, Calif.	g		x		
94. Schirmer Steve. Co., Ltd. 55 Sacramento Street San Francisco, Calif.	g		x		
95. Scrap Loaders, Inc. 3200 N. W. Yeon Avenue Portland 10, Oregon	g		x		

Name and Address of Member Co.		AREA				
		Group(s) *	So. Calif.	No. Calif.	Oregon & Col. River	Wash- ington
[9] 96.	Seaboard Stevedoring Corp. 2 Pine Street San Francisco, Calif.	g	x	x		
97.	Seattle Bulk Loading Terminal, Inc. Pier 48 Seattle, Washington	g, h			x	
98.	Seattle Stevedore Co. 2900 - 11th Avenue, S.W. Seattle 4, Washington	g, h			x	
99.	C. F. Sharp & Co., Inc. Central Tower 703 Market Street San Francisco, Calif.	f	x	x		
100.	Shinnihon Steamship Co., Ltd. (Balfour, Guthrie & Co., Ltd., Agts.) 255 California Street San Francisco, Calif.	f	x	x	x	x
101.	Star Terminal Co., Inc. Pier 22 San Francisco, Calif.	h	x	x		
102.	States Marine Lines 241 Sansome Street San Francisco, Calif.	b, e	x	x	x	x

Exhibit 48

103.	States Steamship Company 320 California Street San Francisco, Calif.	e, h	x	x	x	x
104.	Stockton Bulk Terminal Co. of California 141 Battery Street San Francisco, Calif.	g		x		
105.	Stockton Stevedoring Co. P. O. Box 1793 Stockton, Calif.	g		x		
106.	Tacoma Stevedore & Terminal Co. P. O. Box 1157 Tacoma, Washington	g, h				x
[10]	107. Tait Stevedoring Co., Inc. 2247 East Marginal Way Seattle 4, Washington	g			x	
108.	Transpacific Trans. Co. 351 California Street San Francisco, Calif.	f	x	x	x	x
109.	Twin Harbor Stevedoring & Tug Co. P. O. Box 716 Hoquiam, Washington	g			x	
110.	Union SS Co. of N. Z., Ltd. 230 California Street San Francisco, Calif.	f	x	x	x	x
111.	Washington Stevedoring Co. 36 West Stacy Street Seattle 4, Washington	g			x	

Name and Address of Member Co.	Group(s) *	AREA				
		So. Calif.	No. Calif.	Oregon & Col. River	Washington	
112. West Coast Steamship Co. 601 Board of Trade Bldg. Portland 4, Oregon	e			x		
113. West Coast Terminals Co. of California 311 California Street San Francisco, Calif.	g, h	x	x			
114. Westfal-Larsen Co. Line (General SS Corp., Ltd., Agts.) 432 California Street San Francisco, Calif.	f	x	x	x	x	x
115. Westfall Stevedore Co. Foot of Washington Street P. O. Box 770 Eureka, Calif.	g		x			
116. Weyerhaeuser Steamship Co. 141 Battery Street San Francisco, Calif.	b	x	x	x	x	x
117. Willapa Harbor Steve. Co. Raymond, Washington	g					x
118. Williams, Dimond & Co. 530 W. 6th Street Los Angeles, Calif.	f, h	x	x	x	x	x

[11] 119. Yerba Buena Corporation 55 Sacramento Street San Francisco, Calif.	g, h	x
120. Zidell Docks, Inc. 3121 S. W. Moody Street Portland 1, Oregon	g	x

GROUP(s) *

- | | |
|---------------------------|-----------------------|
| a. Passenger Line Group | e. Offshore Group |
| b. Intercostal Line Group | f. Foreign Line Group |
| c. Coastwise Group | g. Stevedore Group |
| d. Alaska Group | h. Terminal Group |

MEMBERSHIP ROSTER FOR 1962

Exhibit 55

[1] **PACIFIC MARITIME ASSOCIATION**
16 California Street
Phone DOuglas 2-7973
San Francisco 11, Cal.

March 16, 1961

MEMBERS:

REVISED PAYMENT PROCEDURES

ILWU-PMA MODERNIZATION AND IMPROVEMENT FUND

On advice of counsel, a revision in payment procedures to the Association for Modernization and Improvement Fund purposes is required. Internal Revenue regulations provide that any contributions made for the benefit of employees for fringe benefits have to be made by the employers of such employees in order to guarantee deductibility of contributions. This concept was confirmed at a conference held by Association counsel with officials of the Internal Revenue Service in Washington, D. C. a short while ago.

In order to meet Internal Revenue requirements, it is necessary to modify the reporting and paying procedures of member companies to the Association for ILWU-PMA Modernization and Improvement Fund purposes, as follows:

- 1) Member Steamship Companies will report on the Association Declaration of Tonnage form, all tonnage handled during the preceding calendar month, broken down on a port basis, in the same manner as outlined in our letter of 2/3/61. This tonnage declaration form should be in the hands of the Association not later than the 20th of the month to cover tonnage handled during the preceding calendar month, which is in accordance with Association By-Law provisions.
- 2) The member steamship company will complete a Form MI-102 (sample of which is attached to this letter)

Exhibit 55

for each contracting stevedore loading or discharging cargoes for the member steamship company during the month in which such cargoes were handled. Two copies of Form MI-102 should be sent to the contracting stevedore involved in order that he may make payment of the contribution to the Association. Distribution of the form by the member steamship company will be as follows:

- a) The green copy will be sent to the contracting stevedore, who will, in turn, transmit same to the Association together with a check to cover the amount of contribution due.
 - b) The yellow copy will be retained by the contracting stevedore for his file.
 - c) The white copy will be sent to the Association by the member steamship company with the regular monthly tonnage report.
 - d) The pink copy will also be sent to the Association, along with the white copy.
 - e) The blue copy is to be retained by the member steamship company for their file.
 - f) Separate advices should be completed for coastwise cargoes which are now assessable at half the regular rate for loading and half for discharging.
- [2] 3) Form MI-102 made by member steamship companies to cover cargoes handled by each of their contractors on the Pacific Coast should equal the number of tons reported by the member steamship principal to the Association.
- 4) The contracting stevedore, immediately upon receipt of Form MI-102 from the steamship principal, will send to the Association the green copy together with a check payable to Pacific Maritime Association

Exhibit 55

to cover the amount of Modernization and Improvement Fund contribution. If a check is not received from the contracting stevedore within ten (10) days from the time the Association and the contracting stevedore receive copies of form MI-102, the steamship company will be advised of such non-payment. The Board of Directors request that steamship principals advance to their contractors sufficient monies with the remittance advice in order that the contractors may make payments promptly to the Association.

5) Association tonnage dues will be remitted directly to the Association by the steamship principal when submitting tonnage declaration form to the Association.

6) Contracting Stevedores reporting tonnages handled for account of non-member steamship companies will use exactly the same procedure enumerated in our letter of 2/3/61. The contracting stevedore should not include member companies' tonnages in stevedore cargo dues report as this would result in a duplication of tonnages already declared by the member steamship principal.

Association experience has been that during recent weeks some companies have submitted tonnage reports but have failed to make contribution to the Modernization and Improvement Fund in accordance with instructions issued by the Association on 2/3/61. We again wish to reiterate the fact that this contribution is a contractual commitment, exactly the same as welfare, pension and vacation contributions, and should be paid into the Association not later than the 20th of the month following the month in which such tonnages were handled. This is in accordance with action taken by the Board of Directors on January 16, 1961.

(Exh. 55, 2)

591a

Exhibit 55

Prompt reporting of tonnage and payment of contributions is essential in order that Association staff and Directors may have up-to-date information to determine whether the contribution rate is adequate to meet our \$5 million commitment during the year 1961. Information from tonnage declarations will also be needed in connection with other aspects of our agreement with the ILWU of October 18, 1960. Your cooperation, therefore, in submitting reports and making payments promptly will be appreciated.

The foregoing procedures were approved by the Board of Directors on March 9, 1961.

K. F. SAYSETTE,
Vice President & Treasurer.

KFS:IM

Attachment

(Exh. 55, 1 of Att.)

592a

Exhibit 55

[1] MONTHLY REPORT OF ASSESSABLE TONNAGE
ILWU-PMA MODERNIZATION AND IMPROVEMENT FUND

For month of 19....

FOLLOWING IS ALL TONNAGE HANDLED DURING THE MONTH INDICATED BY
..... FOR OUR ACCOUNT AND THE CONTRIBUTION
Contracting Stevedore
DUE THEREON TO THE ILWU-PMA MODERNIZATION AND IMPROVEMENT FUND:

	Tons	Rate	Amount
GENERAL CARGO, LUMBER and LOGS ..	_____	_____	_____
BULK DRY CARGO	_____	_____	_____
		TOTAL	_____

TOTAL TONNAGES SHOWN ABOVE ARE AS REPORTED TO THE PACIFIC MARITIME ASSOCIATION FOR CARGO DUES PURPOSES ON THE MONTHLY REPORT OF TONNAGE AND ARE UNDERSTOOD TO BE SUBJECT TO SUCH INDEPENDENT AUDIT PROCEDURES AS MAY BE DETERMINED BY THE BOARD OF DIRECTORS OF THE PACIFIC MARITIME ASSOCIATION.

Company

Authorized Signature

Date

INSTRUCTIONS TO MEMBER SHIPPING COMPANIES AND AGENTS

1. Prepare one Form MI-102 for each contracting stevedore. Total tons on all Forms MI-102 should agree with total tons on monthly report of tonnage for cargo dues.
2. Attach white and pink copies of this form to the monthly report of tonnage when submitting the latter to P.M.A. Do not remit the modernization and improvement fund assessment to P.M.A. Remit only the cargo dues.

INSTRUCTIONS TO CONTRACTING STEVEDORES

1. Upon receipt of yellow and green copies from the member shipping company or agent, prepare remittance for the total assessment shown above made payable to Pacific Maritime Association and forward with green copy no later than the 20th day of month following the covered month to: K. F. Saysette, Vice President and Treasurer, Pacific Maritime Association, San Francisco 11, Calif.

(Exh. 55, 1 of Att.)

593a

Exhibit 55

- 3. Mail yellow and green copies to contracting stevedore in sufficient time for the contractor to have his remittance in the hands of P.M.A. by the 20th day of the month following the covered month.
- 4. Retain blue copy for your files.
- 2. Retain yellow copy for your files.

THIS IS A FIVE PART FORM

Green	—To contracting stevedore for transmittal to PMA with remittance
Yellow	—To contracting stevedore for file
White	—To PMA with regular monthly report of tonnage for cargo dues
Pink	—Same as white copy above
Blue	—Originating Company's file

Exhibit 56

[1] PACIFIC MARITIME ASSOCIATION
16 California Street
Phone DOuglas 2-7973
San Francisco 11, Cal.

December 14, 1961.

Members:

MODERNIZATION AND IMPROVEMENT FUND ASSESSMENTS

At a meeting of the Board of Directors of the Association held on December 13, 1961, resolutions were adopted having the following effect:

SHIP CLERKS' ASSESSMENT

A Fund contribution of 15¢ per man hour be paid on all ship clerk hours effective *8:00 A.M., December 18, 1961*. The contribution is to be paid through the Central Records Offices in the same manner as the Pension, Welfare, Vacation and other hourly assessments. It will apply to hourly and monthly clerks.

TONNAGE ASSESSMENT

As a result of the hourly contribution on clerks mentioned above, the present tonnage contribution on general cargo, lumber, logs and automobiles is reduced from $27\frac{1}{2}$ ¢ per ton to $24\frac{1}{2}$ ¢ per ton and from $5\frac{1}{2}$ ¢ to 5¢ per ton on bulk dry cargo. The change is to be effective with all loading and discharging operations commencing in any Pacific Coast port on and after *8:00 A.M., December 18, 1961*. The present method of paying the tonnage assessment will remain in effect.

WALKING BOSSES AND FOREMEN'S ASSESSMENT

A new contribution of 4¢ per ton is to be made to a Walking Bosses' and Foremen's Mechanization

(Exh. 56, 1)

595a

Exhibit 56

Fund. The contribution will apply on general cargo, lumber, logs, and automobiles and will become effective on all loading and discharging operations commencing in any Pacific Coast port on and after *8:00 A.M., December 18, 1961.* (This contribution would normally be 2¢ per ton. The double rate is to run only until uncollected contributions due for 1961 have been made up.) The manner of payment will be the same as that employed for the present Mechanization Tonnage assessment.

The above items were adopted by the Board of Directors on the recommendation of the Funding Committee to meet certain legal requirements inherent in the plan. They are subject to review no later than March 15, 1962.

Additional details respecting the exact method of reporting and paying tonnage assessments under these revisions will be provided within the next few days. Your cooperation in complying with the new requirements will be appreciated.

K. F. SAYSETTE,
Vice President & Treasurer.

KFS:IM

(Compl's Prop. Find. and Conclusions 1a)

596a

**Complainant's Proposed Findings of
Fact and Conclusions of Law**

[1a] (Filed June 24, 1963)

Findings of Fact

1. Complainant is a corporation organized under the laws of the Federal Republic of Germany. It manufactures automobiles in the said Federal Republic, and it exports part of its production to the United States.
2. Respondents, Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles), are corporations organized under the laws of the State of Nevada. They are engaged in the business of furnishing stevedoring and terminal services and facilities at San Francisco and Long Beach, California, respectively.
3. Intervenor is a non-profit organization organized under the laws of the State of California. Its membership includes respondents and consists of companies engaged in the operation of vessels from and to, and the furnishing of stevedoring and terminal services facilities in, ports located along the United States Pacific Coast between Canada and Mexico. Intervenor negotiates and administers collective bargaining agreements with labor unions representing employees of its members.
4. The by-laws of intervenor provide for the election of twenty-one directors comprising at least thirteen representatives of shipping lines and at least four representatives of stevedoring firms and terminal operators. The remaining four members are elected on an area basis. Intervenor's by-laws further contain provisions for voting at membership meetings which result in a majority of the votes being held by liner interests and a minority of the votes being held by stevedoring and terminal operator interests. As a result, liner interests dominate over

(Compl's Prop. Find. and Conclusions 1a-2a)

597a

*Complainant's Proposed Findings of Fact
and Conclusions of Law*

[2a] stevedoring and terminal operator interests both in the Board of Directors and in membership meetings of intervenor.

5. Complainant causes a substantial number of the automobiles manufactured by it to be shipped to ports on the United States Pacific Coast. It is by far the largest shipper of automobiles to these ports. The total number of Volkswagen vehicles discharged on the United States Pacific Coast was 41,968 in 1962 and 38,474 in 1961.

6. These shipments of Volkswagen vehicles to the United States Pacific Coast are made preponderantly on vessels chartered by complainant, and complainant arranges directly at its own expense with stevedores and terminal operators for the discharge of these vessels. The number of complainant's vehicles carried to the United States Pacific Coast on vessels chartered by complainant was 28,296 in 1962 and 29,111 in 1961.

7. By reason of these shipments complainant is the largest shipper using chartered vessels for transportation to the United States Pacific Coast.

8. In addition to the vehicles transported on chartered vessels, complainant also ships a large volume of its vehicles to the United States on liner vessels. The volume of these liner shipments was 13,672 units in 1962 and 9,363 units in 1961. Arrangements for the discharge of these vehicles are made with stevedoring firms and terminal operators by and at the expense of the lines; and the freight charges by these lines to complainant include the expense of such discharge as a cost element.

(Compl's Prop. Find. and Conclusions 2a-3a)

598a

*Complainant's Proposed Findings of Fact
and Conclusions of Law*

9. Since 1954, respondents have respectively supplied all stevedoring and terminal services and facilities required for discharge of those of complainant's vehicles which have [3a] been shipped on chartered vessels to the ports of San Francisco and Long Beach, California. Since 1954, respondents have also furnished stevedoring and terminal services and facilities to common carriers by water in connection with the discharge of complainant's vehicles at the said ports. Respondents further have acted as stevedoring and terminal contractors for common carriers by water in the discharge at the said ports respectively of automobiles not manufactured and not owned by complainant.

10. The services which respondents have rendered to complainant in connection with charter shipments and similarly to common carriers in the discharge of vehicles include the unlapping and unchecking, the discharge from ship to pier, the removal from shipside to storage area, sorting, storage and delivery of such vehicles.

11. In connection with these operations, respondents have made available to complainant and to the said common carriers the use of piers and of storage areas which respondents occupy pursuant to arrangements with port authorities and which respondents are required to and do clean, light, heat, maintain and provide with guard service.

12. In connection with the operations referred to in Finding 10, respondents have supplied such equipment as is usually required for stevedoring and terminal services, including a special patent bridle device or gear to pick vehicles up from the hold, tractors to either push or pull vehicles from shipside to storage areas and special hooks needed to connect the vehicles with such tractors.

(Compl's Prop. Find. and Conclusions 3a-4a)

599a

*Complainant's Proposed Findings of Fact
and Conclusions of Law*

13. In return for all services and facilities referred to in Findings 10 to 12, respondents charge complainant at the fixed rate of \$10.45 per vehicle, irrespective of the measurement or weight thereof.

[4a] 14. Respondents render services and furnish facilities similar to those referred to in Findings 10 to 12 to common carriers by water in the handling of automobiles and other types of cargo. Such transactions with common carriers represent about ninety percent of respondents' business.

15. On behalf of its members, intervenor negotiates and administers, among others, collective bargaining agreements with International Longshoremen's and Warehousemen's Union ("ILWU"), the certified collective bargaining representative of longshoremen on the Pacific coast between the Canadian and the Mexican borders. These agreements cover, among other things, wages and practices for all work done on behalf of intervenor's members in the loading, discharge and terminal handling of cargo shipped from and to ports in the said area.

16. On or about August 10, 1959, intervenor and ILWU executed a "Memorandum of Understanding" providing, among other things, for the creation of a special fund, in the amount of \$1,500,000, for the benefit of ILWU's members to be accumulated through employer contributions during a period of twelve months following execution of the said Memorandum. In return for the obligation to accumulate this amount, the employers were given, in the Memorandum of Understanding, certain concessions by ILWU with respect to work practices.

(Compl's Prop. Find. and Conclusions 4a-5a)

600a

*Complainant's Proposed Findings of Fact
and Conclusions of Law*

17. On or about October 18, 1960, intervenor and ILWU executed a "Memorandum of Agreement" containing further substantial concessions by ILWU to the employers with respect to work practices. In return for these concessions, intervenor undertook, among other things, that the \$1,500,000 accumulated pursuant to the August 10, 1959 Memorandum of Understanding, together with a further amount of \$27,500,000 to be raised by employer contributions of \$5,000,000 a year over a period of five and one-half [5a] years, should be contributed to a jointly trusted Fund. The Memorandum of Agreement provided for the disbursement of this Fund so as to guarantee to the employees represented by the ILWU certain specified hours of straight time pay and so as to provide them further with certain retirement and death benefits.

18. On or about November 15, 1961, but as of January 1, 1961, intervenor and ILWU executed an instrument designated as "ILWU-PMA Supplemental Agreement on Mechanization and Modernization" providing in more detail for the creation, management and disposition of the \$29,000,000 Fund required by the Memorandum of Agreement of October 18, 1960.

19. The agreements between intervenor and ILWU referred to in Findings 16, 17 and 18 at all times left to intervenor the free determination, without any interference from ILWU, of the methods through which the Fund required by these agreements was to be raised.

20. During the twelve month period following execution of the Memorandum of Understanding of August 10, 1959, intervenor raised the required amount of \$1,500,000 through contributions from its members on the basis of the number of manhours of ILWU labor used by each of them.

(Compl's Prop. Find. and Conclusions 5a-6a)

601a

*Complainant's Proposed Findings of Fact
and Conclusions of Law*

21. Shortly after the execution of the Memorandum of Agreement of October 18, 1960, intervenor created a Committee to advise on methods for the raising of the further amount of \$27,500,000 required by the said instrument. All of the members of the Committee were representatives of liner interests. The Committee submitted on or about January 4, 1961 a written report recommending that the \$27,500,000 be raised by an assessment on stevedoring and terminal operator members based upon revenue tons handled by them, with bulk cargo being counted only at one-fifth of the value of general cargo. The report further [6a] recommended that cargo was to be treated on a weight or measurement basis depending upon how it was manifested. The report advised future review of the assessment formula with respect to possible hardship cases and inequities.

22. At a meeting of the membership of intervenor on January 10, 1961, the revenue ton assessment formula recommended by the Committee was adopted by a vote of 246 out of 341. At the same meeting the Memorandum of Agreement of October 18, 1960 was ratified by the membership.

23. On January 16, 1961, intervenor's Board of Directors adopted a resolution for the assessment at a rate of twenty-seven and one-half cents per ton for general cargo and of five and one-half cents per ton for bulk cargo in accordance with the membership resolution of January 10, 1961. This decision of the Board of Directors deviated from the resolution of the January 10, 1961 membership meeting, among other things, in providing that scrap metal should be treated as bulk cargo rather than as general cargo and further in providing that tonnage should be determined for purposes of the assessment in accordance with the manner in which cargo had been manifested during

(Compl's Prop Find. and Conclusions 6a-7a)

602a

*Complainant's Proposed Findings of Fact
and Conclusions of Law*

the year 1959, without consideration of any possible change in method of manifesting occurring since then. The impact of the assessment upon automobiles was specifically considered by intervenor's Board of Directors during the course of this meeting.

24. At its meeting on January 16, 1961, intervenor's Board of Directors decided to create a new Committee to advise on possible changes in the method of raising the Fund required by the October 18, 1960 Memorandum of Agreement. All of the members appointed to this Committee were representatives of liner interests.

[7a] 25. This new Committee considered, from time to time, requests and proposals for changes in the method of raising the Fund required by the Memorandum of Agreement of October 18, 1960. The Committee recommended that no changes be made in favor of transshipped cargo, rice in containers and bananas. It did, however, recommend certain changes in favor of the United States Army and in favor of coastwise trade.

26. These recommendations in favor of the United States Army and of the coastwise trade were adopted by intervenor's Board of Directors on March 8, 1961. As to coastwise trade, it was decided that the assessment should be reduced to one-half. This reduction was recommended by the Committee on the ground that coastwise trade was "a very marginal business economically."

27. By resolution of intervenor's Board of Directors adopted on July 3, 1962, the tonnage assessment on certain shipments of lumber in coastwise trade, already reduced to one-half by the resolution of March 8, 1961, was further reduced to two and one-half cents, less than one-tenth of

(Compl's Prop. Find. and Conclusions 7a-8a)
603a

*Complainant's Proposed Findings of Fact
and Conclusions of Law*

the assessment on general cargo in trades other than coastwise transportation. By a further resolution of intervenor's Board of Directors adopted on December 12, 1962, the tonnage assessment on certain other shipments of lumber in coastwise trade was reduced to the same amount. Both reductions were made effective as of January 1, 1961. The reductions were ostensibly made on the ground that the lumber shipments so favored were already subject to certain penalty wage rates; but the reductions were continued in effect although the penalty wage rates were subsequently abolished. The true reason for these reductions was to strengthen the position of carriers who were members of intervenor in their competition with outsiders.

28. As of December 18, 1961, intervenor's Board of Directors reduced the tonnage assessment on general cargo, [8a] lumber, logs and automobiles to twenty-four and one-half cents, but added a further tonnage assessment of four cents for a new Walking Bosses' and Foremen's Mechanization Fund and an assessment of fifteen cents per manhour on certain clerical work performed in terminal operations.

29. From at least March 3, 1961 to at least October 24, 1961, oral and written communications were had at meetings of committees of intervenor, among intervenor's staff and its President and between intervenor and ILWU tending to impose the tonnage assessment through union coercion upon employers not members of intervenor with the goal of thereby reducing the financial obligations of intervenor's members with respect to the Fund.

30. Complainant manufactures and ships to the United States Pacific Coast two different lines of vehicles. One of these, the passenger line, consists of the sedan, the sunroof sedan, the convertible and the Karmann-Ghia. The

(Compl's Prop. Find. and Conclusions 8a-9a)

604a

*Complainant's Proposed Findings of Fact
and Conclusions of Law*

vehicles in this group have an average weight of 1,643 pounds per unit equal to about eight-tenths of a weight ton and an average measurement of 7.8 cubic tons. The other line consists of station wagons, pick-up trucks, panel trucks and other commercial vehicles and is referred to as the "transporter line." Vehicles in this line average a weight of 2,193 pounds equivalent to about 1.1 weight tons. They measure in the average 456 cubic feet corresponding to 11.4 measurement tons.

31. In the approximate ratio between passenger cars and transporters actually shipped by complainant to the United States Pacific Coast, an average vehicle would have a weight of about 0.9 tons and a measurement of about 8.7 tons. Accordingly, a revenue tonnage assessment on complainant's vehicles would be about ten times as high on a measurement basis, if a constant rate per ton were applied, as on a weight basis.

[9a] 32. Through an assessment on a measurement basis the total cost of the discharge of complainant's vehicles at United States Pacific Coast ports would be increased by about 26 percent while the average increase of the cost of discharge of all general cargo through intervenor's Fund assessment would amount to only about 2.2 percent.

33. An assessment on a measurement ton basis on automobiles would amount to a sum equal to about 58 percent of the total direct labor cost, without fringe benefits, involved in the discharge thereof. The total Fund assessments levied by intervenor against its members represent only about five percent of total direct labor cost of these members without fringe benefits.

(Compl's Prop. Find. and Conclusions 9a-10a)

605a

*Complainant's Proposed Findings of Fact
and Conclusions of Law*

34. Compared with either the total cost of discharge or the total direct labor cost involved in discharge, a measurement ton assessment would burden automobiles about ten times as much as a revenue ton assessment at the same rate burdens general cargo in the average.

35. No commodity is burdened as heavily through the Fund assessment, in proportion to total discharge cost and total direct labor involved in discharge, as automobiles. The cargo classifications bearing the next highest burden pay on a weight basis about one-third less than automobiles and involve types of cargo loaded and unloaded at the United States Pacific Coast in small volume, but requiring much more labor for stevedoring, and terminal handling than automobiles.

36. On January 17, 1961, the day after the meeting of intervenor's Board of Directors referred to in Finding 23, at which the impact of the assessment upon automobiles had been discussed, a written protest against the assessment of automobiles on a measurement basis was submitted to intervenor on behalf of complainant.

[10a] 37. Following this written protest intervenor's Vice President and Treasurer issued on behalf of intervenor, but without authority, a ruling to the effect that the assessment on automobiles should be made in all cases on a measurement basis. This ruling purported to introduce, as to automobiles, a practice different from that used as to all other cargo, inasmuch as all other cargo was treated according to the way in which it had been manifested in 1959. This unauthorized ruling was precipitated by the fact that complainant uses to a large extent chartered vessels, thus withdrawing business from the liner interests dominating intervenor.

(Compl's Prop. Find. and Conclusions 10a-11a)

606a

*Complainant's Proposed Findings of Fact
and Conclusions of Law*

38. Protests on behalf of complainant were reviewed from time to time by intervenor's Committee. This resulted in the recommendation that, while all other cargo should be handled as manifested in 1959, automobiles should be burdened with the measurement ton assessment regardless of how manifested.

39. Numerous other protests on behalf of complainant and others against the measurement ton assessment of automobiles were unsuccessful, although remedial action was considered at various times by various persons and groups on behalf of intervenor.

40. The practices as to whether a specific type of cargo is manifested by weight or by measurement vary to a substantial extent from one trade to another and from one carrier to another. Intervenor, nevertheless, levies the Fund assessment for all types of cargo other than automobiles according to the manner in which such cargo happened to be manifested in 1959.

41. There was not in 1959 and there is not at this time any uniform practice with respect to the manifesting of automobiles, except that automobiles were at all times and are manifested and freighted in the inter-coastal and [11a] coastwise trade consistently on a weight basis and except that liner shipments of complainant's vehicles and other automobiles were and are manifested and freighted most frequently on the basis of the number of units, with an additional indication of weight and, in some instances, of measurement.

42. The treatment of automobiles by intervenor for purposes of Fund assessments cannot be sought to be justified by the existence of any prior consistent industry

(Compl's Prop. Find. and Conclusions 11a-12a)

607a

*Complainant's Proposed Findings of Fact
and Conclusions of Law*

pattern dealing with this type of cargo on a measurement basis.

43. A measurement assessment on automobiles is particularly inappropriate with respect to stevedoring and terminal operations because measurement of vehicles has no significant relation to the amount of labor required in the handling of automobiles.

44. Intervenor's Fund assessment has an impact on automobiles about ten times as great as upon average general cargo and about one hundred times as great as upon lumber in coastwise trade.

45. The discharge of automobiles in general and of complainant's automobiles in particular at United States Pacific Coast ports was not benefited more, and was probably benefited less, than the discharge of general cargo in the average by the concessions which ILWU made in return for the creation of the Fund.

46. The economic effect of intervenor's attempted measurement ton assessment on automobiles is to burden the stevedoring and terminal handling of automobiles with substantial expenses which actually relate to the stevedoring and terminal handling of other types of cargo and which are in any event wholly unrelated to the services in connection with which they are sought to be exacted.

[12a] 47. Since the institution of the Fund assessment by intervenor, respondents have from time to time attempted to collect from complainant, in connection with stevedoring and terminal services and facilities supplied in the discharge of vessels chartered by complainant, and in addition to the compensation for such services and facili-

(Compl's Prop. Find. and Conclusions 12a-13a)

608a

*Complainant's Proposed Findings of Fact
and Conclusions of Law*

ties agreed upon between complainant and respondents, amounts equal to those assessed by intervenor on a measurement basis with respect to complainant's vehicles.

48. Complainant has at all times refused to pay these assessments, but has paid to respondents, in addition to the agreed compensation for services and facilities, amounts equal to the manhour assessments referred to in Finding 28.

49. On or about August 14, 1962, intervenor instituted an action against respondents in the United States District Court for the Northern District of California, Southern Division, to recover from respondents the measurement ton assessments with respect to complainant's automobiles. In this action, respondents impleaded complainant in order to recover from complainant the amounts which intervenor sought to recover from respondents. Thereafter, by order dated November 29, 1962 and amended December 11, 1962, the United States District Court granted complainant's motion to stay the said action pending submission to and determination by the Federal Maritime Commission, or by a court of last resort upon appeal from such Commission action, of the issue as to whether the measurement ton assessment as applied to complainant's automobiles violates sections 15, 16 or 17 of the Shipping Act, 1916. Complainant thereupon instituted the present proceeding.

Conclusions of Law

- [13a] 1. Respondents are other persons subject to the Shipping Act, 1916, as defined in section 1 thereof.
2. Most of the other members of intervenor are either common carriers by water or other persons subject to the Shipping Act, 1916, as defined in section 1 thereof.

(Compl's Prop. Find. and Conclusions 13a-14a)

609a

*Complainant's Proposed Findings of Fact
and Conclusions of Law*

3. The arrangements made by intervenor with the participation of respondents and of other members of intervenor for the assessment of cargo for purposes of the Fund to be created in accordance with the agreements referred to in Findings 17 and 18 are cooperative working arrangements among carriers by water and other persons subject to the Shipping Act, 1916, fixing and regulating rates for stevedoring and terminal services and facilities and controlling and regulating competition within the meaning of section 15 of the Shipping Act, 1916.
4. The said arrangements have not been filed with or approved by the Federal Maritime Commission as required by section 15 of the Shipping Act, 1916. In accordance with the said provision, these arrangements and any action tending to carry them out, in whole or in part, directly or indirectly, are unlawful.
5. The assessment by intervenor of automobiles, at a rate applied per revenue ton on other general cargo, on the basis of measurement rather than weight, brought about collectively by respondents, by intervenor, by common carriers by water and by other persons subject to the Shipping Act, 1916, subjects automobiles, including complainant's automobiles, to undue and unreasonable prejudice and disadvantage within the meaning of section 16 of the Shipping Act, 1916.
- [14a] 6. The assessment of automobiles on a measurement ton basis by intervenor and the attempted collection of such assessments by respondents are unjust and unreasonable practices by carriers by water and other persons subject to the Shipping Act, 1916, within the meaning of section 17 of the said Act.

(Compl's Prop. Find. and Conclusions 14a)

610a

*Complainant's Proposed Findings of Fact
and Conclusions of Law*

7. In a system of assessments, in which other classifications of cargo are subjected to a levy per manifested ton at a uniform rate, it would be a just and reasonable practice for intervenor and respondents to apply the same rate to automobiles on the basis of weight.

Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing via first-class mail, postage prepaid, a copy to the attorneys for each such party in sufficient time to reach them on the date said document is due to be filed with the Board.

Dated at New York, New York, this 21st day of June, 1963.

WALTER HERZFELD,
FOR PILLSBURY, MADISON & SUTRO,
and

HERZFELD & RUBIN,
Attorneys for Complainant.

(Initial Decision of Examiner 1)

611a

Initial Decision of Benjamin A. Theeman, Examiner¹

(Filed June 5, 1964)

[1] FEDERAL MARITIME COMMISSION

[SAME TITLE]

Members of the Pacific Maritime Association who are common carriers and other persons subject to the Act including Respondents found to have entered as such members into a cooperative working arrangement whose aims and purposes were to establish a method of assessing and collecting contributions to pay their obligation under an agreement with the International Longshoremen's and Warehousemen's Union. The cooperative working arrangement found not to be within the purview of Section 15 of the Act in that it does not deal with (1) ocean transportation; (2) fixing or regulating transportation rates or fares; (3) giving or receiving special rates, accommodations, or other special privileges or advantages; (4) controlling, regulating, preventing or destroying competition; (5) pooling or apportioning earnings, losses, or traffic; (6) allotting ports or restricting or otherwise regulating the number and character of sailings between ports; or (7) limiting or regulating in any way the volume or character of freight or passenger traffic to be carried.

Respondents having included the assessment in its entirety in their rate to Volkswagen for discharging automobiles

¹ This decision will become the decision of the Commission in the absence of exceptions thereto or review thereof by the Commission. See Rules 13(d) and 13(h), Rules of Practice and Procedure, 46 CFR 502.224 and 502.228.

(Initial Decision of Examiner 1-2)

612a

Initial Decision of Benjamin A. Theeman, Examiner

found not to have violated Sections 16 and 17 of the Act.
Complaint dismissed.

STANLEY S. MADDEN and WALTER HERZFELD, attorneys
for Volkswagenwerk Aktiengesellschaft, complainant.

BRYANT K. ZIMMERMAN, attorney for Marine Terminals
Corporation and Marine Terminals Corporation (of Los
Angeles), respondents.

EDWARD D. RANSOM and GARY J. TORRE, attorneys for
Pacific Maritime Association, intervener.

This proceeding arises out of a complaint filed by Volkswagenwerk Aktiengesellschaft (Volkswagen) involving the payment of certain costs [2] charged by Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles), hereinafter referred to collectively as "Respondents" for services rendered by Respondents to Volkswagen in the discharging the latter's automobiles (VW's) at Respondents' terminals in San Francisco and Los Angeles.

Volkswagen brings to the U. S. about 40,000 VW's annually through the Pacific ports. Respondents are contracting stevedores and terminal operators and as such are members of Pacific Maritime Association (Intervener or PMA). PMA is a corporation organized for the purpose of representing its members in collective bargaining with unions. Longshoremen and marine clerks employed by PMA members are members of the International Longshoremen's and Warehousemen's Union (ILWU). PMA and ILWU established a Mechanization and Modernization Fund herein called the "Mech Fund" whereby PMA members agreed to establish a trust fund for the benefit of employees in the sum of \$29,000,000 over a period of five and one half years beginning January 16, 1961. To procure this sum PMA, under a resolution approved by its members

(Initial Decision of Examiner 2-3)

613a

Initial Decision of Benjamin A. Theeman, Examiner

and Board of Directors, assessed its members for contributions on a tonnage of cargo handled basis. Shortly thereafter, Respondents charged the amount of the assessment on automobiles (hereafter referred to as "Mech Fund charge") to Volkswagen as part of the cost of discharging VW's.

Volkswagen refused and continues to refuse to pay so much of the discharge rate as represents the Mech Fund charge claiming it is too high, and its inclusion in the cost of discharge was improper under the Shipping Act of 1916, as amended (hereinafter called "the Act"). Respondents, thereafter, refused to pay the equivalent amount as a Mech Fund contribution to PMA.

PMA filed a libel against Respondents in the United States District Court for the Northern District of California, Southern Division demanding payment of unpaid Mech Fund contributions from each Respondent as a PMA member. By Respondents' interpleader, Volkswagen was made a party [3] to the Court action. Upon Volkswagen's request the Court stayed the proceedings therein pending submission of the following issues to the Commission for determination:

1. Whether the assessments claimed from [Volkswagen] are being claimed pursuant to an agreement or understanding which is required to be filed with and approved by the Federal Maritime Commission under Section 15 of the Shipping Act, 1916, as amended, 46 U. S. C. 814 (1961), before it is lawful to take any action thereunder, which agreement has not been so filed and approved.
2. Whether the assessments claimed from [Volkswagen] result in subjecting the automobile cargoes of [Volkswagen] to undue or unreasonable prejudice or disadvantage in violation of Section 16 of the

(Initial Decision of Examiner 3-4)

614a

Initial Decision of Benjamin A. Theeman, Examiner

Shipping Act, 1916, as amended, 46 U. S. C. 815 (1961).

3. Whether the assessments claimed from [Volkswagen] constitute an unjust and unreasonable practice in violation of Section 17 of the Shipping Act, 1916, as amended, 46 U. S. C. 816 (1961).

Thereafter Volkswagen filed the complaint in this proceeding alleging that Respondents, other PMA members and PMA had conspired or agreed to impose an extra charge on Volkswagen for terminal services in discharging VW's in violation of Sections 15, 16 and 17 of the Act. PMA was permitted to intervene.

A. PARTIES TO THE PROCEEDING

1. Volkswagen is a corporation of the Federal Republic of Germany. It manufactures automobiles there and exports a number of them to the United States. In 1961, Volkswagen imported through U. S. Pacific ports 38,474 VW's. Of these, 29,111 or about 75% were transported in vessels chartered by Volkswagen; the remainder of 9,363 were transported by common carrier. In 1962, 41,968 VW's were shipped to the Pacific Coast; 28,296, or about 70% on chartered vessels and the remainder, 13,672 on common carriers. During these years, VW's represented the largest number of automobiles imported through U. S. Pacific Coast ports; and the volume of Volkswagen's charter shipment to those ports was greater than that of any other dry cargo charter-shipment.

[4] 2. Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles) are engaged in business as contracting stevedores and ocean terminal operators in San Francisco and Long Beach.² The work is done for common carriers and contract carriers and all forms

(Initial Decision of Examiner 4-5)

615a

Initial Decision of Benjamin A. Theeman, Examiner

of marine transportation, both by vessel or barge. About 90% of their business is for common carriers, 10% for contract carriers. Respondents are members of the Pacific Maritime Association, the Intervener herein. Respectively, they are members of the San Francisco Bay Carloading Conference, approved by the Federal Maritime Commission on June 10, 1946 under Agreement 7544, and the Southern California Carloaders Association, approved June 25, 1946 under Agreement 7576, both of which have filed conference agreements approved under section 15 of the Shipping Act, as amended.³

Since 1954, Respondents have discharged VW's in San Francisco and Long Beach brought by chartered vessels⁴ and common carriers. They have also discharged other makes of automobiles, government vehicles and other general cargo. The stevedoring operation in the California ports takes in movement of the cargo from a point of rest aboard the vessel to point of rest in storage and vice versa. In addition to stevedoring, Respondents provide clerking, sorting, and checking and storage services. In San Francisco and Long Beach, Respondents occupy piers under an arrangement with the respective port authorities and are obligated to provide light, heat, cleaning and general maintenance, including watchmen. As more fully discussed hereafter, Respondents operate terminal [5] facilities in

² The operations at both places are similar. For the purpose of this decision the Respondents will be considered collectively.

³ There is testimony that Respondents are members of an organization known as Stevedoring Contractors of the Pacific Coast formed in 1962 and approved by the Commission. The Commission's records do not reveal this information.

⁴ Since 1960, Volkswagen is the only charter carrier of automobiles to these ports.

(Initial Decision of Examiner 5)

616a

Initial Decision of Benjamin A. Theeman, Examiner

the respective ports and are clearly "other persons" subject to the Act.⁵

3. *Pacific Maritime Association* was organized in 1949 as a non-profit corporation with power to negotiate and administer labor contracts with offshore and onshore unions on behalf of its members. PMA membership consists of and is open to carriers (domestic and foreign), marine terminal operators, and stevedore contractors in the various ports of the Pacific Coast. Collective bargaining occurs within a unit defined by the National Labor Relations Board as to longshore functions, i.e., work of longshoremen and marine clerks. This proceeding deals only with longshore functions, wherein the ILWU, for collective bargaining purposes, is certified to represent the longshoremen and marine clerks employed by the marine terminal operator and stevedore contractor members of PMA.⁶

Article IV of the by-laws of PMA provides for a division of the membership into 8 groups of similar interests, among other reasons, for the purposes of representation on the Board of Directors. Article I vests all power in a Board of 21 Directors who are selected from the groups above mentioned in a manner and in the proportion set forth in the By-laws.

Article XIII provides that the members shall "pay such dues and assessments as shall be fixed and levied by the Board of Directors . . .". One such is "Cargo Dues" which may be measured by (1) each ton of cargo loaded or discharged at U. S. Pacific Coast ports by or for mem-

⁵ See page 26.

⁶ Under similar circumstances collective bargaining occurs between PMA and ILWU for seamen employed by the carriers under a master contract also certified by the Labor Board for a unit embracing American flag vessels headquartered on the Pacific Coast.

(Initial Decision of Examiner 5-6)

617a

Initial Decision of Benjamin A. Theeman, Examiner

bers or for non-members; and (2) the man hours performed by employees of the members under the terms of the ILWU agreements. The Board of Directors, in establishing "Cargo Dues" may use either or a [6] combination of these bases. Section 2, Article XIII provides that, "In fixing and levying that portion of the cargo dues according to tonnage handled, the Board . . . may establish different rates per ton, or other measurement unit applicable to different loading or discharging handling conditions," and "shall . . . fix rules for calculation of the tonnage or other measurement units loaded, discharged, and/or handled, by or for members . . .". The Board of Directors' determinations "in respect to all of the matters specified in this Section shall be final and conclusive."

Article XI, Section 2 provides that a contract with a union, or one imposing personal liability on the members must first be approved by a vote of members holding a majority of the voting power of the entire membership. Section 3 provides that a member who has not authorized or accepted in writing such contract and who has not voted in favor of its approval may avoid all obligation thereunder by resigning from PMA within seven days after the vote on such contract. But after a member is bound it must abide by its obligations or be subject to certain penalties including liquidated damages.

It is claimed by no party that PMA is subject to the Act. Nor is there any evidence to show that PMA engages in any of the activities contemplated by the Act. On the other hand, there is no question that many PMA members are subject to the Act, being common carriers by water, and organizations engaged in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.

(Initial Decision of Examiner 6-7)

618a

Initial Decision of Benjamin A. Theeman, Examiner

B. NEGOTIATIONS FOR AND ESTABLISHMENT OF THE
MECHANIZATION AND MODERNIZATION FUND.

1. In 1957, ILWU and PMA started bargaining and negotiating with regard to the mechanization and utilization of labor saving devices in connection with the work of cargo-handling for the mutual benefit of the work force and the employers. This meant (1) on the part of ILWU, [7] to permit to employers the unhindered introduction and maintenance of labor saving devices, and the efficient operation of the workers; and (2) on the part of PMA (i.e. PMA members who employed longshoremen), to share with the workers resultant savings in wage costs, and to assure that the change in work methods would create no unsafe working conditions, or result in a "speed up" of the individual worker.

2. On August 10, 1959, as a result of continued collective bargaining, an agreement was executed which provided among other things, that additional time, not to exceed one year from June 15, 1959, was needed for study and additional experience in connection with mechanization. Within this period, PMA agreed that it would create a fund of \$1½ million for the benefit of the work force. The agreement did not specify how PMA was to raise this sum but the sum was accumulated by PMA assessing its members on a man hour basis.⁷

3. Further negotiation gave rise on October 18, 1960, to a "Memorandum of Agreement on Mechanization and Modernization". The details of this agreement are not pertinent to this proceeding. It suffices our purpose that the agreement furthered the goal of ILWU and PMA to establish certain benefits for the working force to be paid

⁷ See Article XIII of the PMA By-laws, above.

(Initial Decision of Examiner 7-8)

619a

Initial Decision of Benjamin A. Theeman, Examiner

out of a \$29,000,000 trust fund to be established by PMA. To be included in this fund was the \$1½ million already mentioned, the remainder was to be accumulated over a five and one-half year period at the rate of \$5,000,000 per year. The agreement was effective upon ratification by the ILWU and PMA and was to expire on July 1, 1966.

4. The Mech Fund plan contemplated that the members of PMA in the bargaining unit commit themselves individually and severally to the payment of the fund. In light of this, ILWU agreed that the method of collection of the fund from the PMA membership was to be reserved to PMA. In November 1960, Mr. St. Sure, President of PMA, appointed a [8] six man Committee on Work Improvement Fund to determine and recommend a method of assessment to the Board of Directors and the PMA membership.⁸

5. During January, 1961, the Board of Directors and the PMA membership adopted the method of raising the Mech Fund contained in the majority report of the Work Improvement Fund Committee and approved the Agreement with ILWU.

6. On November 15, 1961, the Mech Fund in its final form was established by PMA and ILWU when they executed a "Supplemental Agreement" effective January 1, 1961. The parties to the agreement are the ILWU and its locals representing certain longshoremen and marine clerks, hereinafter referred to as "Employees" and the PMA representing contracting-employers, including some steamship

⁸ The decision of this committee and the ensuing events in PMA gave rise to the Volkswagen complaint herein. This aspect of the proceeding is dealt with more fully in paragraphs 15 through 39 below.

(Initial Decision of Examiner 8-9)

620a

Initial Decision of Benjamin A. Theeman, Examiner

lines and terminal operators⁹ who employ employees directly and the steamship lines⁹ who contract with Employers to move and handle cargo. The Supplemental Agreement provided for the collection and establishment of three trusts totalling \$29,000,000 as an obligation of the PMA members with exclusive power reserved to PMA, "to adopt and change the method, manner and amount of collecting" contributions from its member companies. PMA was designated the collecting agent of the Employers and was to act as a conduit for the passing of funds to these trusts. All payments to the fund by the Employers and by PMA to the Trusts are final and irrevocable. None but Employees, or their beneficiaries, are entitled to the benefits set forth in the Agreements.

7. For the period from January 16, 1961 when payments to the fund started, through December 31, 1962 approximately \$10,000,000 had been paid into the fund over and above the \$1½ million dollars previously [9] collected. About \$130,000 remains unpaid by the stevedore companies handling VW's.

**C. FOR YEARS PRIOR TO THE MECH FUND PMA
MEMBERS REPORTED AND PAID TONNAGE DUES
WITHOUT OBJECTION.**

8. Since at least 1958, Respondents, and other PMA members (stevedoring contractors, terminal operators or common carriers) paid cargo or tonnage dues to PMA¹⁰ as instructed and assessed by PMA on about 600 items of cargo handled. Customarily the amount of this payment was included in the rate charged the carrier or if it was a chartered vessel to the cargo.

⁹ These may be members or non-members of PMA.

¹⁰ See Article XIII of the PMA By-laws, supra.

(Initial Decision of Examiner 9-10)

621a

Initial Decision of Benjamin A. Theeman, Examiner

9. Since at least 1958 Respondents ¹¹ reported and paid their tonnage dues assessment on automobiles including VW's on a measurement ton basis.

10. Since at least 1958, Volkswagen shipped its VW's to U. S. Pacific Coast ports on charter carrier or common carrier as unboxed vehicles. Whether the automobile was a sedan, convertible, transporter, or Karmann-Ghia, each was considered a unit for discharging purposes, though the weight and cubic content of each type varied from the other.

11. The discharge rate for VW's transported by charter was negotiated on a unit basis between Respondents and Volkswagen and was known as the "unit price". It was established upon a kind of "cost plus" basis, wherein labor involved in the discharge of the VW's was broken down into various components and the cost for each phase determined. These costs, plus other items, such as overhead and profit yielded the rate. One of the items making up the "unit price" was the amount of the assessment for tonnage dues.

12. Admittedly, Volkswagen was aware that the tonnage dues item was included in the rate; that for automobiles the amount of the assessment [10] was computed on a measurement ton basis; and that Respondents paid tonnage dues to PMA on that basis.

13. The record is not clear as to how the VW's and other automobiles were shipped via common carrier. Generally they were transported on a unit basis but the

¹¹ At all times here involved, automobiles were considered measurement cargo in foreign commerce; were transported on a weight basis in the coastal and intercoastal trades; were freighted on a unit basis by some carriers, i.e., a lump sum for a particular car or model, and particularly by Volkswagen in its charter arrangements.

(Initial Decision of Examiner 10-11)

622a

Initial Decision of Benjamin A. Theeman, Examiner

measurement and weight were shown on the manifest. In any event, the charge for stevedoring to the carrier was on a measurement ton basis and tonnage dues to PMA were reported and paid on that basis.

14. Neither Volkswagen nor any other person protested the method used to report or pay tonnage dues, or the fact that the item was included in the stevedore's or carrier's rate.¹²

D. ESTABLISHMENT OF THE METHOD OF COLLECTING CONTRIBUTIONS TO THE MECH FUND.¹³

15. The method to be adopted by PMA to collect the Mech Fund received considerable attention during the early collective bargaining between ILWU and PMA. Four or five collection methods were discussed. Mr. St. Sure testified that the ILWU's interest in the method to be adopted, ceased after it was agreed that the method of collection was to be reserved to PMA. As already stated, \$1½ million had been collected on a manhour basis. In the months of June and December 1960 some members of the PMA protested the manhour basis as unfair.

16. In the meantime the Work Improvement Fund Committee appointed in November 1960 was working on its recommendations. As testified by Peter Teige, Chairman of the committee, they were hopeful of coming "up with a system that would not be excessively burdensome to anyone" but particularly one that would be "simple in administration".

¹² In 1958, PMA advised its membership that reporting and payment of tonnage tax on automobiles (or any other cargo) on a weight basis when measurement basis should be used was an error. PMA requested corrected reports from the members.

¹³ In an attempt to show clearly the agreement here involved, the following paragraphs set forth in some detail the actions and resolutions of PMA and PMA members that constitute the agreement.

(Initial Decision of Examiner 11)

623a

Initial Decision of Benjamin A. Theeman, Examiner

17. On January 4, 1961, the Work Improvement Fund Committee issued its recommendations in the form of a majority and minority [11] opinion.¹⁴ The division was four to two. It is not considered essential for the purposes of this decision to state this report in detail. It shows that the Committee considered at least five methods or combination of methods of assessment. Some of these had arisen in the earlier discussions between PMA and ILWU. Reasons for and against each method were carefully set forth. The majority recommended that "the contributions to the Fund be raised on a cargo tonnage basis," which "would be the same as the present tonnage formula used for the computation of a portion of PMA dues. In this formula, bulk cargo tonnage is counted at one-fifth the value of general cargo tonnage. The tons are revenue tons—weight tons of 2,000 pounds, measurement tons of 40 cubic feet, and lumber at 1,000 board feet per ton. The cargo is that manifested for loading or discharging at Pacific Coast ports. Special rules apply to coastwise and transshipped cargo. The payments would be made by the employers of ILWU that [are] subject to the agreement."

18. On January 6, 1961 after "considerable discussion" on the subject, the Board of Directors adopted the majority report except that they provided that "all tonnage [shall be] treated equally as to rate for a period of six months, and during this interim further studies will be made on the subject".

19. On January 10, 1961, at a meeting of the PMA members, again after considerable discussion, the PMA members adopted the original majority report of the committee restoring the language, "with bulk cargoes at one-fifth the general cargo rate."¹⁵ At the same time, they directed additional study of the method with a report due

¹⁴ They are set forth fully in Appendix I.

¹⁵ This resolution is fully set forth in Appendix II.

(Initial Decision of Examiner 12)

624a

Initial Decision of Benjamin A. Theeman, Examiner

in six months. The Board of Directors was directed to examine and determine the definition of bulk cargo.

[12] 20. On January 11, 1961 a notice was sent out to the PMA membership advising them of the action taken at the respective meetings and that "The Treasurer will notify you as to the contribution rates and effective date."

21. On January 16, 1961, the Board of Directors set the rate of contribution to the Fund at 27½ cents on general cargo and 5½ cents on bulk cargo effective as of January 16, 1961. The Board also declared that "the tonnage declarations made by the companies are to be made in exactly the same manner as manifested and reported during the year 1959,¹⁶ and any changed method of manifesting from that date will not be valid for reporting tonnages covering the fund contributions." At the January 16 meeting, the Board of Directors decided in response to a question that had been raised that scrap iron, pig iron and steel shavings should be considered as bulk cargo for assessment purposes. During the discussions it was pointed out that a change in the assessment rate of one commodity might lead to other changes; and that the subject of automobiles had already been raised.

22. By notice, dated January 17, 1961, headed "MECHANIZATION AND MODERNIZATION FUND" the Treasurer notified the PMA membership of the action of the Board of Directors. It stated in pertinent part:

- 1) Contribution rate on General Cargo will be 27½¢ per ton, as manifested with 2000 pounds weight,

¹⁶ Volkswagen questions the appropriateness or legality of the action of the Board of Directors in inserting the year 1959, when it was not included in the resolution adopted by the membership. Volkswagen also questions the legality of other actions by PMA officials in their official capacity. This is considered without consequence or materiality to the issues in this proceeding.

(Initial Decision of Examiner 12-13)

625a

Initial Decision of Benjamin A. Theeman, Examiner

40 cubic feet measurement and 1000 board feet of lumber constituting a ton. This is comparable to reporting presently being made by members for PMA tonnage dues purposes.

2) Contribution rate on Bulk Cargo will be 5½¢ per ton . . .

4) Effective date of contribution is January 16, 1961 . . .

5) Coastwise and transshipped cargoes will carry the full contribution rate for mechanization purposes.

[13] 6) Tonnage declarations by companies are to be made in exactly the same manner as manifested and reported to the Association for dues purposes during the year 1959 (excepting scrap iron and pig iron) and any changed method of manifesting from that date will not be valid for reporting tonnages covering Mechanization Fund contributions.

7) Declarations of tonnages will be made, as in the past, by member steamship companies and contracting stevedores reporting for non-member companies and government agencies, being made in exactly the same manner by such companies as PMA dues. Mechanization contributions are part of a labor contract, . . ."

The declaration form presently used for reporting tonnages to the Association for dues purposes will also be utilized for the Mechanization and Modernization program.

23. At about this time, PMA again became aware that some of the members had been reporting automobiles for tonnage dues purposes on a weight basis instead of on a

(Initial Decision of Examiner 13-14)

626a

Initial Decision of Benjamin A. Theeman, Examiner

measurement basis. By letter dated February 3, 1961, PMA informed the membership that this was error.^{16a} The steamship companies and contracting stevedores were told that if they had been reporting automobiles (or any other cargo) using weight when measurement should have been used, a supplementary tonnage report should be submitted together with a check to cover retroactively the additional amount of dues involved. The letter stated further that "Future reports on automobiles for PMA dues and Modernization and Improvement Fund purposes are to be made on a measurement basis."

E. RESPONDENTS INCLUDE THE MECH FUND ASSESSMENT IN THE AUTOMOBILE STEVEDORING RATE.

24. On a measurement ton basis the amount of the Mech Fund contribution on automobiles was about 10 times as great as the amount on a weight ton basis. The effect on Volkswagen may be shown by using the average figures for the VW's discharged for approximately one year during 1962. According to these figures the measurement ton (MT) of the average VW was 8.7 tons and the weight ton (WT) of the average of the VW was 0.9 tons. At 27½¢ a ton, the Mech Fund assessment on a measurement basis equals \$2.35 per vehicle; and on weight equals \$.25.

[14] 25. At or after the PMA membership meeting in January, 1961, Respondents and about 5 or 6 other stevedores, all of whom discharged VW's (hereafter referred to as "the group"), discussed among themselves the impact of the Mech Fund assessment on the cost of discharging automobiles. It was the consensus of the group that the company doing the discharging would be unable to absorb the contribution if it was assessed on a measurement basis

^{16a} This letter mentioned the previous letter dated January 16, 1958 dealing with same reporting error on automobiles.

(Initial Decision of Examiner 14-15)

627a

Initial Decision of Benjamin A. Theeman, Examiner

and it was indicated that the assessment should be passed on in the stevedoring rate to the customer.

26. The record does not clearly show how soon after the above discussions Respondents included the amount of the Mech Fund assessment on automobiles in the stevedoring rate. It is concluded that this occurred shortly after January 16, 1961.

27. Aware of Volkswagen's dissatisfaction, Respondents some time afterward offered Volkswagen a lower rate whereby Respondents would absorb an amount equal to that if the assessment had been made on a WT basis. Volkswagen rejected this offer and stated it would not pay the Mech Fund charge in the rate if it were assessed on a MT basis. Since Volkswagen was satisfied with Respondents discharging operations, Volkswagen continued to use them. For a while the charge continued at the old rate. Some time later, a lesser rate was negotiated. The rates contained the 27½¢ item. At all times Volkswagen paid the rate except for the 27½¢ item.

28. When Volkswagen ceased to pay the Mech Fund charge in the rate, Respondent ceased to pay an equal amount representing the assessment on VW's to PMA.¹⁷

29. There is no substantial evidence to show that the actions and discussions of the group (a) were part of the regular and official business of PMA or authorized or ratified by PMA; or (b) were part of [15] the regular and official business of the PMA membership, or (c) were thereafter ratified by PMA, or the PMA membership.

30. Evidence was introduced to show there were cargo items shipped or handled on a MT basis where the amount

¹⁷ Similar actions occurred with and by other stevedoring contractors handling VW's.

(Initial Decision of Examiner 15)

628a

Initial Decision of Benjamin A. Theeman, Examiner

of the Mech Fund assessment computed on that basis exceeded the amount of the assessment computed on a WT basis. In no instance, was the difference greater than on automobiles.

F. PMA REJECTS VOLKSWAGEN'S PROTESTS.

31. Volkswagen became aware immediately of the MT assessment on automobiles. By letter dated January 17, 1963 addressed to PMA, it protested the assessment as a discriminatory burden on Volkswagen and requested that PMA reconsider the basis of the proposed Mech Fund assessment. Among the suggestions made was that the levy on automobiles be made on a WT basis. A similar protest was made by the Port of San Francisco.

32. In January 1961, the old Committee on the Mech Fund had been reappointed. The New Funding Committee held several meetings in February, 1961 to consider several protests that PMA had received, including that of Volkswagen. The Committee after consideration recommended to the Board of Directors that some be approved and some be disapproved.¹⁸ With regard to automobiles, the position

¹⁸ The committee recommended approval of requests that (1) empty Army conexes be not assessed as are empty commercial containers; (2) cargo containing Army conexes be assessed as are commercial containers moving in the trade; i.e. on manifested measurement (or weight as the case may be) basis of the cargo contained therein; and (3) coastwise cargo be assessed only once for each ton of cargo carried as has been the custom 50% at the point of loading and 50% at the point of discharge. The committee recommended disapproval of requests that (1) Army vehicles be assessed on other than a measurement basis; (2) bananas be considered bulk instead of general cargo; (3) similarly with bulk rice in containers; (4) transshipped cargo be assessed in a manner other than full rate when off-loaded and again when on-loaded because the full payment at both places was in accord with present procedure; and (5) mail should be assessed on a weight basis.

(Initial Decision of Examiner 15-16)

629a

Initial Decision of Benjamin A. Theeman, Examiner

advocated by Volkswagen was rejected. The Committee recommended the continuance of [16] the assessment on an MT basis regardless of how it was manifested.¹⁹ On March 8, 1961, the Board of Directors adopted the recommendations of the New Funding Committee.

33. The manifesting practice on the Volkswagen charter ships carrying VW's was consistent in that the VW's were manifested on a unit basis. The manifest showed no freight because it was a chartered ship. The manifest always showed the weight in kilos. Many times the manifest showed weight and measurement also. Where the VW's were transported by common carrier, the automobiles are manifested as a rule on a unit basis but the weight and measurement were both indicated thereon. The tariff on automobiles including VW's is stated on a unit basis, but the rate is dependent on the measurement of the auto. The Mech Fund assessment was included in the tariff rate.

34. On May 15, 1961, the Chairman of the New Funding Committee requested suggestions from PMA members for new or improved methods of assessing of the Mech Fund. At the request of Volkswagen, several stevedoring contractors, including Respondents, suggested that the Mech Fund assessment be established on unboxed automobiles on a "unit" basis rather than on a measurement ton basis.

35. The problem concerning payment by Volkswagen of the Mech Fund costs remained unsolved. Volkswagen continued to press for another assessment basis. At Volkswagen's request a meeting was arranged between representatives of the New Funding Committee, and Volkswagen for November 27, 1961. This meeting was also attended by other staff members of PMA and representatives of

¹⁹ This appears to conform to the PMA practice in the collection of its tonnage tax. See footnote 11.

(Initial Decision of Examiner 16-17)

630a

Initial Decision of Benjamin A. Theeman, Examiner

stevedoring contractors handling VW's. At this meeting Volkswagen pointed out that the increase in costs due to the present Mech Fund assessment would embarrass Volkswagen in its competitive position with other compact cars. Again Volkswagen proposed a unit basis for assessment purposes.

36. Several of the stevedoring contractors including Respondents, supported Volkswagen's position. Respondents stated that as stevedoring [17] contractors and members of PMA they knew they were free to absorb the assessment if they so desired. It was their belief that they could not do so. They also stated that the action of PMA in singling out automobiles to be assessed in this manner was arbitrary.

37. The New Funding Committee met on three occasions thereafter and on December 12, 1961 decided to reject the Volkswagen proposal. The unit proposal was considered unacceptable because of the undesirable effect it would have on the overall Mech Fund program. They considered that if a unit assessment were established for automobiles, units would also have to be set up for other items of cargo from tiny boxes to locomotives, with a separate charge or assessment per unit. The recommendations of the Committee were accepted and by letter dated March 27, 1962, PMA informed Respondents there would be no change in the Mech Fund assessment on automobiles.

G. OTHER CHANGES IN THE MECH FUND PLAN.

38. At a meeting of the PMA Board held on December 13, 1961, they adopted a recommendation of the New Funding Committee effective December 18, 1961. Some concern had been shown that some employers of clerks were

(Initial Decision of Examiner 17-18)

631a

Initial Decision of Benjamin A. Theeman, Examiner

not contributing an appropriate share to the Mech Fund. To remedy this an assessment of 15¢ per man hour was set up on clerks. At the same time, the tonnage assessment was reduced to 24½¢ and the bulk cargo assessment to 5¢. In the same resolution a new assessment of 4¢ per ton on general cargo, lumber, logs and automobiles was established to be made at a Walking Bosses' and Foremen's Mechanization Fund. Volkswagen has paid the 15¢ man hour charge on clerks.

39. Subsequently, at a July 3, 1962 meeting, the Board of Directors approved a recommendation of the New Funding Committee reducing the Mech Fund rate of assessment on the coastwise movement of lumber to \$.05 per ton payable 2½¢ at the port of loading and 2½¢ at the port of discharging, 1000 board feet to constitute a ton. The reasons given for the reduction were that in the past decade a penalty rate of \$1.00 per hour straight [18] time and \$1.50 per hour overtime had been charged for the handling of coastwise lumber. The rate was first established by collective bargaining because of improved methods of handling such cargo. No other type of cargo is subject to a similar penalty rate. For the purposes of the Mech Fund assessment, the coastwise trade was limited to such trades to which the penalty rates of \$1.00 per hour straight time and \$1.50 per hour overtime apply, as set forth in the basic longshore agreement.

H. NON-MEMBERS OF PMA PAY THE MECH FUND CHARGE.

40. Not all employers of longshoremen are members of PMA. The employees of these non-members belonged to the ILWU. The supplemental Agreement to the Mech Fund provided that employers who are non-members of PMA

(Initial Decision of Examiner 18-19)

632a

Initial Decision of Benjamin A. Theeman, Examiner

shall contribute to the Mech Fund at comparable rates and in a like fashion as member employers. Negotiations between the ILWU and PMA resulted in a working arrangement whereby the Union would lend its assistance that non-member companies make contributions "in exactly the same manner and in the same amounts as PMA members retroactive to January 16, 1961." Under this arrangement non-member companies paid an assessment for automobiles on a measurement ton basis.

**[19] I. COMMON CARRIERS PAY THE MECH FUND
CHARGE ON AUTOMOBILES.²⁰**

41. Common carriers to the U. S. Pacific Coast ports carried unboxed automobiles at all times here involved. In addition to VW's there were Renaults, Mercedes and others. They were carried on berth term, that is the carrier paid for

²⁰ An exception is Wallenius Lines an independent carrier that had been transporting VW's to the U. S. Pacific Coast since at least 1959. The freight rate on automobiles including VW's is quoted in the tariff on a unit basis, but the rate is dependent upon the measurement of the auto. In some instances the tariff shows the actual measurement of the car and the freight rate. The automobiles are manifested as a rule on a unit basis but the weight and measurement are both indicated thereon. Commencing in early 1961, the stevedoring contractors included the amount of the Mech Fund contribution in the stevedore billings to Wallenius Lines. Wallenius at Volkswagen's request protested the item and paid the bill with the exception of the Mech amount. As a result, the Line was advised by the stevedoring contractors that its vessels would not be discharged unless the items were paid. Under these circumstances Wallenius Lines agreed with the contracting stevedores to pay the Mech Fund item with the explicit understanding that once the matter was resolved, if any monies were owing to Wallenius they would be refunded. This continued until about the end of 1962. Then, Wallenius learned that Mech Fund items contained in the stevedoring rates were not being paid by Volkswagen and they ceased to pay it also.

(Initial Decision of Examiner 19-20)

633a

Initial Decision of Benjamin A. Theeman, Examiner

the loading and discharging.²¹ The tariff rate for unboxed vehicles was established, if by conference, under an agreement approved by the Federal Maritime Commission and a tariff filed with the Commission, if by an independent, under a tariff filed with the Commission. No conference increased its rates because of the Mech Fund contribution. There is no evidence that any independent carrier did so. There is no evidence that any shipper of automobiles other than Volkswagen complained of the Mech Fund, its assessment or method of collection.

[20] J. BENEFITS UNDER THE MECH PLAN TO AUTOMOBILE STEVEDORING.

42. Commencing with about 1961, in connection with the discharge of automobiles, the stevedoring contractors were able to increase the rate of production of their gang hour. This was attributable to improvements on the VW vessels that facilitated unloading of the automobiles. Officials of stevedoring contractors testified that they could not foresee that they would be able to develop improvements in the discharging of VW's in the immediate future under the latitude allowed employers under the Mech Fund plan. This testimony did not apply to other items of cargo. Officials of the stevedoring contractors admitted they received general benefits from the Mech Fund plan, such as freedom from strikes or slow-downs. No evidence to show the amount of benefit or savings that accrued or could accrue to stevedoring contractors from the Mech plan was referred to or in-

²¹ Military unboxed vehicles are an exception and are carried on an F.I.O. basis, i.e. the military is responsible for loading and discharging. The Military Department at first questioned the inclusion of the Mech Fund charge in their rate but after discussion with PMA agreed to pay the Mech Fund contribution on an MT basis. They were doing so at the time of the hearing.

(Initial Decision of Examiner 20-21)

634a

Initial Decision of Benjamin A. Theeman, Examiner

troduced. All parties agreed that the Mech plan was beneficial to the trade.

**K. ACTIONS BY RESPONDENTS AND PMA AS TO THEIR
RESPECTIVE LEGAL OBLIGATIONS IN RESPECT TO
VOLKSWAGEN.**

43. In March 1961, after Respondents had notified PMA of Volkswagen's refusal to pay the Mech Fund charge, Respondents requested assistance from PMA as to the legal position they should take in demanding payment. Suit against Volkswagen was considered but because of a possible disturbing effect it was decided that no legal action should be taken until after the execution of the Supplemental Agreement between PMA and ILWU.

44. In the early part of December, 1961, Respondents requested authority of PMA to bring suit against Volkswagen for the payment of the 27½¢ item. On December 13, 1961, at a meeting of the Board of Directors of PMA it was decided that PMA would give legal and moral support to the Respondents if suit were started and that PMA would participate in any future legal action. The Board referred the matter to its legal counsel.

45. On July 3, 1962, the Board of the Directors met and modified the above position. PMA counsel was authorized to assist Respondents [21] (and other stevedoring companies handling Volkswagens) only if any action by or against Respondents raised issues which might jeopardize the Mechanization Plan. In that case, PMA Counsel was authorized to intervene and if necessary, assume responsibility for handling that portion of the action involving such issues. In the same resolution, the Board of Directors, reserved to PMA the right to institute action against PMA members in default in payment of their assessments.

(Initial Decision of Examiner 21-22)

635a

Initial Decision of Benjamin A. Theeman, Examiner

**L. RATIFICATION BY PMA MEMBERSHIP OF ACTS OF
BOARD OF DIRECTORS.**

46. At a meeting of the PMA membership held in March 1961, 1962 and 1963 respectively, the PMA members ratified the actions of the Board of Directors for each previous calendar year.

**M. THE AGREEMENT AMONG THE PMA MEMBERS TO
COLLECT THE MECH FUND ASSESSMENT.**

Volkswagen's complaint goes to the actions of PMA, its Board of Directors and its Committees. As has already been stated there is no question that PMA is not a person subject to the Act. It follows as a matter of course that neither its Board of Directors or its Committees would be persons subject to the Act and that agreements among them in that capacity would also not be subject to the Act.

It has been found, however, that Respondents are PMA members; and that PMA members are common carriers and other persons subject to the Act.²² It also has been found that the PMA membership, including Respondents, entered into a Mech Fund agreement among themselves through the resolution [22] of January 10, 1961. This resolution has

²² It has already been found that Respondents, common carriers and terminal operators, all subject to the Act are PMA members. It is this factor that raises the question of Commission jurisdiction over the agreement entered into among them. A distinction must be drawn between the actions of Respondents as members of PMA and their independent actions as stevedoring contractors or terminal operators. An example of the former is the vote on January 10, 1961. An example of the latter is the discussion with the other stevedoring contractors about the inability to absorb the Mech Fund assessment. This decision is made on the basis that it is the former type of action that Volkswagen is complaining about although not specifically labeled as such. As to the latter, those actions are being referred to the Commission for appropriate action. See the last paragraph of this decision.

(Initial Decision of Examiner 22)

636a

Initial Decision of Benjamin A. Theeman, Examiner

been implemented thereafter by further actions of the Board of Directors and the Funding Committee which subsequently were ratified by the PMA membership. Under these circumstances, there exists an agreement among common carriers and other persons subject to the Act. In order to determine whether Section 15 requires the January 10, 1961 agreement be filed, it is essential first to determine what the agreement is.

The January 10, 1961 agreement came into being as a result of the recommendations of the Work Improvement Fund Committee. This committee according to the testimony of Pres. St. Sure was created in November 1960 for the purpose of considering "the question of a method of collection" of the Mech Fund and then to make "a recommendation as to a method of payment" to the Board of Directors and the PMA membership.

The report when issued was acted upon by the PMA Board of Directors at a meeting on January 6, 1961. The Board adopted the majority report of the Committee except that it did away with the distinction for assessment purposes between general cargo and bulk cargo. The report and the action of the Board of Directors was submitted to the PMA membership for action on January 10, 1961. At that meeting, the PMA membership nullified the change made by the Board of Directors and in effect adopted the majority report of the Committee.

This simply stated is the history of the January 10, 1961 agreement. Under the circumstances, the expression of the January 10, 1961 agreement is found in two documents: The first is the report of the Work Improvement Fund Committee dated January 4, 1961 which includes the majority and minority reports. The Second is the resolution of the Membership dated January 10, 1961. Each is attached herewith marked Appendix I and II respectively.

(Initial Decision of Examiner 22-23)

637a

Initial Decision of Benjamin A. Theeman, Examiner

A careful reading of these documents show that they deal solely with "the appropriate method of dividing the costs" of the Mech Fund [23] among the PMA members.²³ Nothing contained in the Committee report or the minutes of the January 10, 1961 meeting indicates that the Committee or the PMA membership in ratifying the majority report had gone or had intended to go beyond that specified area.

There is no substantial evidence to show that the actions of either the PMA membership or the Board of Directors or the Committee after January 10, 1961 was intended to do more than establish a method of assessment of the membership for contributions to the Mech Fund. As directed by the membership the Board of Directors on January 16, 1961 established a Mech Fund rate to be paid by the membership. On January 17, 1961 the membership was notified in detail about the Mech Fund plan and its assessments. Thereafter, the assessment was levied by PMA against its members.²⁴ There is no substantial evidence to show that the PMA members as such agreed among themselves how this assessment was to be treated after it was made, or that PMA issued any directions to any PMA member as to how it was to handle the assessment after it was made.

The evidence is clear that the tonnage dues assessed by PMA of its membership was in turn charged by the PMA membership to the shipper and the carrier in the rates; and that this had been the practice since the tonnage tax was put into effect. The evidence is also clear that the Work Im-

²³ The minority report states the Committee was "charged with recommending methods for allocating among PMA member companies payments due under the ILWU modernization and improvement agreement."

²⁴ It is found that there is no substantial evidence to support Volkswagen's conclusion that PMA imposed "a non-absorbable charge on this cargo."

Initial Decision of Benjamin A. Theeman, Examiner

provement Fund Committee was aware of this fact. There is no substantial evidence to show, however, that either the Board of Directors, the Committee or the PMA membership intended that this custom or practice was to be incorporated in or apply to the Mech Fund charge. Had there been such an intention it would have been reasonable and simple to say so in either the report or the resolution.²⁵ The chairman of the Work [24] Improvement Committee and the Vice President of Respondents each testified that there was no understanding in the Committee or among the PMA members that the Mech Fund assessment shall be passed on to the customer by the PMA members.

That the January 10, 1961 agreement did not include agreement that the Mech Fund charge was to be passed on by the PMA members seems clear from the actions and events that occurred involving the Respondents and the VW charge. The Respondents admittedly were aware that the Mech Fund charge was their obligation as a PMA member. They also knew that they were "entirely free to absorb assessments" if they so desired. Respondents and other stevedoring contractors expressed their uniform opinion that they could not absorb the Mech Fund and the indications were that it should be passed on to the customer. Thereafter, Respondents and other stevedoring contractors included the whole Mech Fund charge in their rate to Volkswagen. Some time afterward, Respondents entered negotiations with Volkswagen for the establishment of a new rate wherein Respondents would absorb part of the Mech Fund.

²⁵ There is no substantial evidence to show that there was a secret agreement among the PMA membership to that effect. Nor does Volkswagen contend that there was. In their brief, Volkswagen states, "Nor, except as to automobiles, do we see any reason to question the good faith of those who devised the tonnage assessment mechanism and its specific application."

(Initial Decision of Examiner 24-25)

639a

Initial Decision of Benjamin A. Theeman, Examiner

This offer Volkswagen rejected. These discussions and actions would have been so much surplusage if the January 10, 1961 agreement had provided that the Mech Fund charge was to be passed on to the customer.

The Mech Fund assessment system has been effective since January 16, 1961. The membership has been adhering to the reporting and payment system. Since that date about \$10,000,000 has been collected. There is no substantial evidence of complaint by any other person than Volkswagen. It is noted that the Board of Directors dealt with requests, in addition to Volkswagen's, as changes in the basis for the assessment on the PMA members. Also, the PMA Board varied the amounts of the assessments as well as the base upon which it was founded. There is no substantial evidence to show that the actions of PMA Board, the Committee or the PMA membership after January 10, 1961 were not consonant with the resolution then adopted.

[25] The foregoing represents a review of (1) the documents constituting the agreement of the PMA members of January 10, 1961 establishing a method of collection and payment of Mech Fund contributions; (2) the events leading to the passage of these resolutions; and (3) the actions of the parties thereafter in carrying out the resolution.²⁶ Preponderantly, and on the record as a whole, it is found that these actions constituted an agreement among the PMA members establishing a cooperative working arrangement among common carriers and other persons subject to the Act, whereby for Mech Fund purposes, PMA was to assess a contribution on the PMA members according to a tonnage

²⁶ Considerable weight is given to the actions of the parties in carrying out an agreement to determine what was intended. Cf. *Contract Rates—Port of Redwood City*, 2 U.S.M.C. 727, 739 (1945).

(Initial Decision of Examiner 25-26)

640a

Initial Decision of Benjamin A. Theeman, Examiner

formula and that the contribution was to be reported and paid to PMA by the membership accordingly.²⁷

THE ISSUES

1. Are Respondents considered other persons subject to the Act?
2. Does the cooperative working arrangement of January 10, 1961 entered into by Respondents and other persons subject to the Act as PMA [26] members and their actions taken thereafter pursuant to this arrangement constitute an agreement that must be filed under Section 15 of the Act?
3. Does the action of Respondents in incorporating into their stevedoring rate for Volkswagen the entire amount of

²⁷ Volkswagen does not conclude differently. See Volkswagen opening brief, page 7 where they state that they are not referring to the independent acts of Respondents because "of necessity [they] are the direct results of action taken by PMA." Also page 37, "... respondents by necessity had to increase [their stevedoring] charges pro tanto. Respondents' net profit and that of all stevedores' is less than one dollar per car. Certainly, therefore, respondents could not absorb a \$2.75 or \$2.85 by car measurement ton assessment although they would have been able to assume a weight ton assessment about ten times less than such amount. As respondents' and VW's other terminal contractors had no reason to service this customer at a loss, it was obvious that—with the possible exception of a few cents—the measurement ton assessment had to become part of their rate structure.

Without placing an unduly sinister implication on this, we mention the admission of respondents Vice President that 'all stevedores involved in this case.' i.e., all the stevedore and terminal contractors working for VW, got together and, at least, expressed their "uniform opinion", that they could not absorb and therefore would have to pass on the Fund assessment on Volkswagen automobiles if levied on a measurement ton basis." (Page reference to transcript eliminated).

(Initial Decision of Examiner 26-27)

641a

Initial Decision of Benjamin A. Theeman, Examiner

the Mech Fund charge constitute a violation of Sections 16 and 17 of the Act?

DISCUSSION

I. RESPONDENTS ARE OTHER PERSONS SUBJECT TO THE ACT.

Respondents contend that they are not "other person(s) subject" to the Act because they do not carry on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water" within the definition laid down in Section 1 of the Act. This contention is based on two legs: (a) the only movement of VW's in controversy in this proceeding is that on the chartered vessels of Volkswagen, and as to the that movement, Respondents are not supplying facilities "in connection with a common carrier by water"; (b) Volkswagen objects to and complains only about the stevedoring aspect of the services performed by Respondents, and the Commission has never exercised jurisdiction over stevedoring activities.²⁸

There is no doubt that Respondents are other persons subject to the Act. Respondents as members of PMA voted with the other members of PMA to approve the January 10, 1961 resolution. At that time they were admittedly furnishing terminal facilities to common carriers by water. At all times herein involved while supplying stevedoring services to the chartered ships of Volkswagen the record shows and Respondents admit they were supplying terminal facilities, not only to Volkswagen, but also to other common carriers.

[27] The Commission and its predecessors have consistently taken jurisdiction over terminal operators under

²⁸ Citing *California Stevedore & Ballast Co., et al. v. Stockton Port District, et al.*, 7 F.M.C. 75 decided January 26, 1962.

Initial Decision of Benjamin A. Theeman, Examiner

similar circumstances.²⁹ As terminal operators they are members of conferences whose agreements have been filed with and approved by the Commission. Under all the circumstances herein, it is found that Respondents at all times herein involved are other persons subject to the Act and to the Commission's jurisdiction. Nor would it be considered a bar to the Commission's jurisdiction over Respondents should it prove that a portion of the present proceeding deals with an operation over which the Commission does not or may not have taken jurisdiction.³⁰

²⁹ See *Agreements Nos. 8225 and 8225-1, etc.* 5 FMB 648 decided August 6, 1959, affirmed *Greater Baton Rouge Port Commission, et al. v. F.M.B.* 287 F 2d 86 (CA 5) 1961, c.d. 368 U. S. 985 (1962). *International Trading Corporation of Virginia, Inc. v. Fall River Line Pier Inc.* 7 FMC 219, 224-225, decided April 16, 1962. Note also the Commission's full discussion on this subject in *Status of Carloaders and Unloaders* 2 U.S.M.C. 761, 767-770. The principles stated therein are equally applicable here.

³⁰ See *California Stevedore & Ballast Co. et al. supra* at page 81. Compare the Commission's language in a mimeographed Denial of Motions to Dismiss in Docket No. 1158, *In the Matter of Agreements No. 134-21, etc.* issued April 28, 1964:

While it may in the final analysis prove true that a carrier may operate as both a common carrier and a contract carrier and that we have no jurisdiction over contract carriage this is one of the questions the proceeding was instituted to resolve. Our predecessor, *In the Matter of Agreements 6210, et al.*, 2 USMC 166, 170 (1939) held that section 15 of the Shipping Act, 1916 (46 U.S.C. 814) required the disapproval of agreements which result in unreasonable and unjust discrimination or prejudice to a carrier's common carrier service, even though the discriminatory practices result from or are part of the contract phase of the carrier's activities.

(Initial Decision of Examiner 27-28)

643a

Initial Decision of Benjamin A. Theeman, Examiner

II. THE COOPERATIVE WORKING ARRANGEMENT AMONG PMA MEMBERS REGARDING THE MECH FUND DOES NOT CONSTITUTE A SECTION 15 AGREEMENT.

We have found that the cooperative working arrangement among the PMA and the PMA members is an agreement for the purposes of collecting the sum of \$29,000,000. to pay off the obligation of the PMA members assumed under its agreement with ILWU. We have also found that common [28] carriers by water and other persons subject to the Act including Respondents have entered into a "cooperative working arrangement". Another factor is necessary to permit the conclusion that the agreement in this proceeding is within the purview of Section 15 and as such is required to be filed. That factor is not present here.

The Commission categorically has listed in the following fashion agreements that must be filed under Section 15.³¹

- (1) fixing or regulating transportation rates or fares, or
- (2) giving or receiving special rates, accommodations, or other special privileges or advantages, or
- (3) controlling, regulating, preventing, or destroying competition, or
- (4) pooling or apportioning earnings, losses, or traffic, or
- (5) allotting ports or restricting or otherwise regulating the number and character of sailings between ports, or
- (6) limiting or regulating in any way the volume or character of freight or passenger traffic to be carried, or

³¹ See *Pacific Coast European Conf.-etc.* 5 FMB 247, 259 (1957).

(Initial Decision of Examiner 28-29)

644a

Initial Decision of Benjamin A. Theeman, Examiner

(7) in any manner providing for an exclusive, preferential, or cooperative working arrangement.

There is no question that the agreement herein does not fit any of the first six categories above listed. Taking the seventh category literally, it fits therein.

In light of the fact that Section 15 provides that a common carrier or other person subject to the Act shall file *every agreement* and Volkswagen contends:

.... "the collective bargaining, the labor cost, labor charges" are not at all involved in this case. VW has never objected to the agreements reached between PMA and ILWU. On the contrary, it has expressed the opinion that these agreements represent a most impressive and salutary achievement in labor relations.

[29] The Fund assessment is another matter, wholly divorced from labor-management problems. This case would be exactly in the same posture if PMA had made the assessment to raise funds for an office building, for hiring halls or for other facilities for use by its members. Obviously, the distribution of such costs, whether arising out of a labor agreement or out of any other project, is not protected from Commission scrutiny by an exemption, statutory or other.

the question must be resolved whether the particular cooperative working arrangement between PMA members who are common carriers or other persons subject to the Act must be filed under Section 15. The answer must be in the negative.

Examination of previous cases shows none nor has any been cited that bears precisely on this point. It would be idle conjecture to imagine what might be filed with the Commission, if the requirement in Section 15 that every

(Initial Decision of Examiner 29-30)

645a

Initial Decision of Benjamin A. Theeman, Examiner

agreement between common carriers and other person subject to the act providing for a cooperative working arrangement were taken literally. Some limitation must be applied.

The Supreme Court has stated that it is the Commission's function "to determine whether any agreement such as is described in the [Act] has actually been made."³² The Commission early in its history recognized that the words "every agreement" in Section 15 must be circumscribed.³³ The language of the Circuit Court with regard to the Board's approval of Section 15 agreements may if paraphrased be applied with equal weight to filing requirements, i.e., the language of the Act does not look inanely to the Board requirement that a business agreement be filed, but to an agreement the aims and purposes of which will bring it within the reach [30] of the section . . .³⁴ To require the filing of any agreement between carriers and other person subject to the act providing for a "cooperative working arrangement" would be dealing with the language of the Act in an inane fashion. Logically, this would require the filing of the agreement among the PMA members to organize PMA even though the latter corporation was

³² *U. S. Navigation Co. v. Cunard S.S. Co.* 284 U. S. 474; 50 F 2d 83, 90 (CA 2 1931).

³³ See *Section 15 Inquiry*, 1 U.S.S.B. 121 (1927) the Commission determined that "agreements are to be distinguished from the routine of conference activities." ; that "a literal interpretation of the word 'every' to include routine operations . . . would result in delays and inconvenience to both carriers and shippers"; that "sending the board . . . circulars and tariffs . . . which contain references only to routine arrangements . . . is not regarded as a filing under section 15 . . ."

³⁴ *Associated Banning v. F.M.B.* 247 F 2d 557, 560 (CAD.C.) 1957.

(Initial Decision of Examiner 30)

646a

Initial Decision of Benjamin A. Theeman, Examiner

organized for collective bargaining purposes.³⁵ Volkswagen, however, does not extend its position that far.

It is not possible to lay down any hard and fast rule concerning the filing of agreements within category 7. Whether this agreement must be filed, or that agreement need not be filed would depend upon the facts and circumstances under which the agreement came into being and the aims and purposes expressed therein. It is possible to lay down some guide lines³⁶ to indicate which cooperative working arrangements must be filed. Either of two sets of guide lines may serve this purpose.

The Act was formulated for the purpose, among others, of regulating carriers by water engaged in the foreign and interstate commerce of the United States.³⁷ In other words, the regulation of ocean transportation. Thus, it follows that any cooperative working arrangement dealing with or pertaining to ocean transportation is an agreement that is subject to the Act.³⁸ By the same token, Section 15 would

³⁵ Cf. *Associated-Banning Co. et al. v. Matson Nav. Co. et al.*, 5 F. M. B. 336, 341 (1957) where the Commission approved an agreement for the formation of Matcinal, "which agreement is little more than evidence of a general intention of the parties to enter the stevedoring, terminal and carloading and unloading business as partners acting through the new corporate entity."

³⁶ These guide lines of necessity are very flexible. Axiomatically, each case must stand on its own feet.

³⁷ Preamble to the Shipping Act of 1916.

³⁸ Undoubtedly it is ocean transportation that former Chairman Morse meant when he testified before the Celler Committee "Any cooperative working arrangement which in my opinion deals with transportation. A cooperative working arrangement which did not deal with transportation in my opinion would not be covered by section 15." See House Report No. 1419, 87th Congress, 2d Session, Report of the Antitrust Subcommittee page 333.

(Initial Decision of Examiner 30-31)

647a

Initial Decision of Benjamin A. Theeman, Examiner

not require the filing of [31] cooperative working arrangements that did not pertain to ocean transportation.³⁹

Another method would be to apply the rule of ejusdem generis to Section 15. Under this rule the Commission would be required to construe the language: "in any manner providing for an exclusive, preferential, or cooperative working arrangement" coming as it does at the end of a list of practices and arrangements as limited to the practices and arrangements of the same general class as those specifically mentioned in the previous six categories.⁴⁰

³⁹ The Legislative history of the Act supports this statement. Note The Alexander Report filed pursuant to H. Res. 587, 63rd Congress Chapter X pages 281-314; particularly the opening paragraph of Recommendations Relating to Water Carriers Engaged in Foreign Trade at page 415, reading as follows:

The facts contained in the foregoing report show that it is the almost universal practice for steamship lines engaging in the American foreign trade to operate, both on the in-bound and out-bound voyages, under the terms of written agreements, conference arrangements or gentlemen's understandings, which have for their principal purpose the regulation of competition through either (1) the fixing or regulation of rates, (2) the apportionment of traffic by allotting the ports of sailing, restricting the number of sailings, or limiting the volume of freight which certain lines may carry, (3) the pooling of earnings from all or a portion of the traffic, or (4) meeting the competition of non-conference lines.

The language of Section 15 in the 1961 amendment to the Act is the same as that contained in the 1916 Act. The latter was based on the recommendations contained in the Alexander Report. See H.R. #659 dated May 19, 1916, 64th Cong., 1st Session and Senate Report #689 dated July 19, 1916, 64th Cong., 1st Session. See also the language of the Commission: *In re: Pacific Coast Conference* 7 FMC 27 at page 34 (1961).

⁴⁰ This concept is not novel. The Commission has already applied the rule of ejusdem generis to Section 16 Second. See *Beaumont Port Commission v. Seatrain Lines, Inc.*, 3 FMB 556, 563 (1951). In the Mech Fund assessment, it is clear that the arrange-

(Initial Decision of Examiner 31-32)

648a

Initial Decision of Benjamin A. Theeman, Examiner

Applying either guide line to the cooperative working arrangement between and among the PMA members creation is one that pertains neither to ocean transportation nor to the first six categories listed above. Under these circumstances it is found that the agreement is a cooperative working arrangement without the purview of Section 15 and need not be filed with the [32] Commission even though the parties thereto are common carriers and other persons subject to the Act.⁴¹

⁴¹ Volkswagen concedes that Commission jurisdiction does not extend "to activities of regulated persons unrelated to maritime transportation." See *In the Matter of Wharfage Charges and Practices at Boston*, 2 U.S.M.C. 245 (1940) where it was held that though a railroad company is also a regulated marine terminal operator, it is clear that in handling of cargo on the rails it is not within the scope of the Act. On the other hand, the Commission will take jurisdiction over agreements between persons covered by the Act which deal with matters not covered by the Act, such as brokers, stevedores, and passenger agents when those matters pertain to or deal with marine transportation. See *In re Gulf Brokerage and Forwarding Agreements*, 1 U.S.S.B.B. 533, 534 (brokerage was then not covered by the Act); *California Stevedore & Ballast Co. et al. v. Stockton, etc.* supra (the Commission has not yet declared its jurisdiction over stevedoring); *Investigation of Passenger Steamship Conferences, etc.* Docket #873 decided February 19, 1964, page 23 of mimeographed decision (passenger agents).

(Initial Decision of Examiner 32-33)
649a

Initial Decision of Benjamin A. Theeman, Examiner

III. OTHER CONTENTIONS OF THE PARTIES CONCERNING SECTION 15.⁴²

PMA has raised a contention concerning the relationship between labor agreements and the Shipping Act. Volkswagen raises a contention concerning the relationship of Sherman Act case principles to the Shipping Act. Each of these is discussed briefly in this section.

A. *It is unnecessary to determine that the agreement establishing the method of collecting the Mech Fund is part of a labor agreement.*

A major contention by PMA is that the Commission does not have jurisdiction of the agreement establishing the method of collecting the Mech Fund because it is a part of a collective bargaining agreement; that there is a fundamental national policy that the Commission may not [33] butt in to the process of collective bargaining. It is unnecessary that the Commission determine whether the subject agreement is or is not part of a labor agreement. Under the Act the Commission is empowered and directed by Congress to deal with those agreements that come within

⁴² Volkswagen in its briefs has advanced a contention not previously made either in the courts or during the hearing herein to the effect that the "liner" or "common carrier" interests dominate PMA, particularly in its actions with regard to the Mech Fund assessment; that by reason of the liner dominated interests, PMA "whether acting through its Board of Directors or through its membership meeting, would have at heart primarily the interests of the liners" to the particular detriment of Volkswagen a user of chartered vessels. Without commenting on the significance of this contention, it is found that there is no substantial evidence in the record to support Volkswagen's contention.

(Initial Decision of Examiner 33)

650a

Initial Decision of Benjamin A. Theeman, Examiner

the purview of the Act.⁴³ To make a determination that the Agreement is either within or without section 15, the Commission looks to the standards set forth in Section 15.⁴⁴ The fact that the agreement (or the parties) may also come within the scope of another statute does not deprive this Commission of jurisdiction.⁴⁵ It is in accordance with these precepts which have been announced by the Commission in no uncertain terms⁴⁶ that this proceeding has been decided.

B. *Sherman Act prohibitions and their effect on the instant proceeding.*

Volkswagen contends that the agreement here involved is within the purview of Section 15 because it is one "fixing or regulating rates", or "controlling, regulating, preventing or destroying competition." Volkswagen arrives at this conclusion by stating among other things that under the antitrust laws "it is well established that any collective action among competitors having a direct impact on prices

⁴³ See *Far East Conference v. U. S.* 342 U. S. 570 (1952), *U. S. Navigation Co. v. Cunard S.S. Co.*, 284 U. S. 474. Note: Sec. 22 of the Act provides that any person may file with the Commission a complaint setting forth a "violation of this Act . . . (emphasis supplied). Further in the same section the Commission on its own motion is given authority to "investigate any violation of this Act."

⁴⁴ See footnote 46.

⁴⁵ Cf. *D. J. Roach Inc. v. Albany Port District, et al.*, 5 F.M.B. 333, 334 (1957).

⁴⁶ Cf. *Alcoa Steamship Co. v. Cia Anonima Venezolana de Navegacion, et al.* 7 FMC 345, 364 where the Commission stated,

This proceeding lies under Section 15 of the Shipping Act of 1916. This section sets out the standards for approval or disapproval of agreements filed according to its terms. We here apply those standards and no others. We are not concerned here with any promotional provision of the laws. . .

(Initial Decision of Examiner 34)

651a

Initial Decision of Benjamin A. Theeman, Examiner

is prohibited."⁴⁷ [34] There appears to be no doubt that the Mech Fund created for each participant a new business expense. How each participant intended to, or did handle that expense is not shown. There is no substantial evidence of any agreement or collective action among the PMA members in that regard.⁴⁸ It may be as Volkswagen states that each participant was required "by necessity" to pass the charge on to the customer. If so, then the charge could have been passed on in full, or in a greater or lesser amount. The participant was free to absorb any of the assessment or not, or add a percentage thereon for profit and overhead. This, however, constitutes a matter of business judgment that each participant individually would be required to make. No case has been referred to that declares this type of business action is violative of the anti-trust laws. In any event, in light of the fact that it has been found that the Mech Fund agreement is not required by Section 15 to be filed, and that as found hereafter Respondents have not been shown to have violated Sections 16 and 17 of the Act, it is considered unnecessary in this proceeding to determine whether the actions of Respondents and other PMA members are prohibited under the anti-trust laws.

IV. THE MEASUREMENT TONNAGE ASSESSMENT INCLUDED BY RESPONDENTS IN ITS STEVEDORING RATE DOES NOT DISCRIMINATE AGAINST AUTOMOBILES IN VIOLATION OF SECTION 16 OF THE ACT.

In its opening brief Volkswagen makes the following statement:

⁴⁷ The cases cited by Volkswagen stand for the proposition that an agreement or concerted action "designed to affect prices" constitutes a violation. See *U. S. v. Gasoline Retailers Ass'n, Inc.*, 285 F 2d 688, 691 (7 CA 1961).

⁴⁸ Except possibly as to the group that held the conversation about the inability to absorb the automobile assessment.

(Initial Decision of Examiner 34-35)

652a

Initial Decision of Benjamin A. Theeman, Examiner

We do not claim that the measurement formula "regardless of how manifested" subjects Volkswagen automobiles to "prejudice or disadvantage" as compared to other automobiles, and we admit that there is no other cargo classification in competition with automobiles.

Under decisions of predecessor agencies of the Federal Maritime Commission in such cases, section 16 of the Shipping Act, 1916 (46 U. S. C., section 815), has been held inapplicable. *Huber Mfg. Co. v. N. V. Stoomvart Maatschappij "Nederland,"* 4 F. M. B. 343 (1953); *Paraffine Companies, Inc. v. American-Hawaiian S.S. Co.,* 1 U.S.M.C. 628 (1936); *Johnson Pickett Rope Co. v. Dollar S.S. Lines, Inc., Ltd.,* 1 U.S.S.B. 585 (1936). The Hearing Examiner may consider himself bound by these precedents.

[35] Our only reason for invoking section 16 at this time, accordingly, is to preserve the issue so as to be able to, ask for a reconsideration of the above rulings if this case should reach the Commission itself and also to have it available for possible judicial review.

The facts and circumstances herein substantially support Volkswagen's admission that there is no other cargo classification in competition with automobiles. On the record as a whole it is found that the action of Respondents in including the Mech Fund charge in their stevedoring rate does not constitute undue or unreasonable preference or advantage within the meaning of Section 16 of the Act.

(Initial Decision of Examiner 35-36)

653a

Initial Decision of Benjamin A. Theeman, Examiner

V. THE MEASUREMENT TONNAGE ASSESSMENT INCLUDED BY RESPONDENTS IN ITS STEVEDORING RATE FOR AUTOMOBILES IS NOT AN UNJUST AND UNREASONABLE PRACTICE WITHIN THE MEANING OF SECTION 17 OF THE ACT.

Section 17 of the Act requires that a person subject to the Act "shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property."

As stated above, neither PMA nor the agreement between and among PMA members has been found subject to the Act. For that reason we do not comment on the justness or unjustness, reasonability or unreasonability of the actions of PMA or the aims and purposes of that agreement. Volkswagen is complaining about Respondents practice of including the Mech Fund assessment in its stevedoring rate. This discussion concerning Section 17, therefore, deals with the relationship between Respondents and Volkswagen.

Prior to the establishment of the Mech Fund Volkswagen negotiated its rate for discharging VW's with Respondents on what amounts to a cost plus basis. Volkswagen admittedly was aware of each item that went to make up the rate. Volkswagen does not contend that any item included in that rate or the rate charged by Respondents without the Mech Fund Charge was either unjust or unreasonable. Thereafter, Respondents faced with the obligation to pay the Mech Fund assessment decided, at least as [36] to automobiles, to include an equal amount in the rate for handling automobiles. Does this action by Respondents constitute an unjust and unreasonable practice?

There is no contention by Volkswagen or any evidence to show that the inclusion of the Mech Fund charge in Respondent's rate would increase Respondent's profits. As stated above, Volkswagen does not contend that Respondents profits are unjust or unreasonable. There is no doubt

Initial Decision of Benjamin A. Theeman, Examiner

that under the circumstances here stated the Mech Fund assessment as included in Respondents' rate constitutes an operating expense applicable to the discharge of automobiles. Volkswagen does not content that the inclusion of an operating expense as such is either improper or unreasonable.

Volkswagen's complaint is addressed in effect solely to the amount of the assessment.⁴⁹ Respondents took such action as was available to them to assist Volkswagen. At the latter's request Respondents solicited PMA in an effort to have the basis for the assessment on automobiles changed from measurement to weight or reduced in some other manner. Also Respondents assisted Volkswagen when the latter presented their application for a change to PMA. PMA did not act favorably on this request. Respondents offered to compromise the matter by absorbing a part of the assessment. Volkswagen refused that offer. No case or law has been cited that compels Respondents under these circumstances to absorb the assessment or to refrain from attempting to collect the entire amount from its customer. Precedent for the latter action was well established with regard to the tonnage tax to which Volkswagen never objected even though it was set on a measurement basis.

The evidence shows that the Mech Fund charge was included in the rate charged for all other foreign cars. Volkswagen was not the only [37] shipper to whom the rate applied but Volkswagen is the only shipper that has refused to pay the charge. There is no evidence to show that the other shippers considered unjust or unreasonable the Mech Fund charge inclusion in the rate. Also where VW's were shipped by conference carrier and discharged by Respondents the conference rate was paid. That included the Mech Fund charge.

⁴⁹ Volkswagen's contention that the Mech Fund charge puts the VW at a competitive disadvantage in relation to other compact cars is given little weight considering the relationship between the Mech Fund charge of about \$2.35 to the selling price of VW's.

(Initial Decision of Examiner 37-38)

655a

Initial Decision of Benjamin A. Theeman, Examiner

Volkswagen claims that PMA compels the Respondents to impose this excessive charge for the handling of automobiles in order that PMA may make up for deficiencies in revenue resulting from subsidies for coastwise lumber shipments, as well as, in some degree, from undue benefits bestowed on other cargo generally. Without commenting on the validity of this contention, it is significant that no charge of this nature is levelled against Respondents, nor is there any evidence to show that charges attributable to the handling of other cargo are attempted to be collected by Respondents from Volkswagen.

Under the circumstances in this case it is evident that Respondents as a matter of business expediency included the Mech Fund contribution for automobiles in their stevedoring rate. The result may be a higher rate than Volkswagen may desire to pay. There is insufficient evidence, however, to establish that this practice was either unjust or unreasonable.⁵⁰

ULTIMATE CONCLUSIONS:⁵¹

On the record as a whole it is found:

(1) The agreement entered into on January 10, 1961 by PMA members who are common carriers and other persons subject to the Act including [38] Respondents constitutes a cooperative working arrangement. It has not been shown that this is an agreement fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing or destroying competi-

⁵⁰ Cf. *Evans Cooperage Co. Inc. v. Board of Commissioners of the Port of New Orleans* 6 FMB 415. Note conditions laid down by the Commission in *Nickey Bros., Inc. v. Manila Conference* 5 FMB 467, 476.

⁵¹ Requested findings, conclusions and contentions not discussed in this decision or embraced herein have been considered and are not justified by the record or are unnecessary for the determination of the issues herein.

(Initial Decision of Examiner 38)

656a

Initial Decision of Benjamin A. Theeman, Examiner

tion; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or dealing with ocean transportation. Accordingly the PMA members subject to the Act were not required to file a copy as provided in Section 15. The non-filing of a copy of said agreement did not and does not constitute a violation of the Act.

(2) Respondents have not been shown to have made or given any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic, or subjected any particular person, locality or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever in violation of Section 16 of the Act.

(3) Respondents have not been shown to have established or enforced an unjust or unreasonable practice in violation of Section 17 of the Act.

For the foregoing reasons the complaint should be dismissed.

Evidence in the record indicates that Respondents and other stevedoring contractors may have entered into an agreement some time after January 10, 1961 to the effect that the automobile Mech Fund assessment could not be absorbed and that it should be passed on to the customer in the shipping rate. Such an agreement may well be within the purview of Section 15. The Examiner raised some questions with regard to this matter but was limited by the scope of the complaint hearing. Volkswagen placed no "undue sinister implications" on this agreement and did not attempt to examine into the matter fully. Accordingly, the matter is referred to the Commission for appropriate action.

Washington, D. C.
June 4, 1964.

/s/ Benjamin A. Theeman
BENJAMIN A. THEEMAN,
Presiding Examiner.

(App. II-Initial Decision 3-4)

657a

Appendix I, Annexed to Foregoing Initial Decision

(Same as Exhibits 5-A and 5-B printed herein at pages 466a to 479a.)

Appendix II, Annexed to Foregoing Initial Decision

[3] DETERMINATION AS TO METHOD OF CONTRIBUTION TO ILWU-PMA MODERNIZATION AND IMPROVEMENT FUND: The Chairman reported that the Board of Directors had previously approved the Agreement between the PMA and ILWU of October 18, 1960, but had left the question of the method of contributions to the Fund for membership action.

A Sub-Committee to recommend the method of funding has been working for approximately two months and reported to the Board of Directors at its meeting on January 6, 1961. The Board of Directors after considering the Majority and Minority Report of the Sub-Committee voted: "That the collection of the Fund be based on a tonnage formula with all tonnage being treated equally as to rate for a period of six months, and during this interim further studies will be made on this subject."

Considerable discussion then developed concerning the Majority and Minority recommendations of the Committee and the position of the bulk carriers.

It was regularly moved and seconded that the Majority recommendation of the Committee appointed to propose a method for collection of the Fund, calling for a tonnage formula with bulk cargoes at one-fifth the general cargo rate, be adopted, with the understanding that the method of collection will receive continued [4] study and be presented to the Membership again in six months.

The Chairman explained the three recommendations which had been made:

(App. II-Initial Decision 4)

658a

Appendix II

1. *Majority Report* (on which the motion is based)

26 $\frac{3}{4}$ ¢ on general cargo
5 $\frac{1}{2}$ ¢ on bulk

2. *Minority Report*

10¢ a ton
12¢ per manhour

3. *Board of Directors*

20¢ a ton

It was further agreed that the Board of Directors would examine and determine the definition of bulk cargoes.

At this time a secret ballot was taken and the vote was polled as follows:

246	yes
74	no
21	withheld
67	absent

Motion carried by a majority of the total voting strength of the Association Membership.

The Chairman announced that the motion would be construed to mean that if a different method of contribution should be adopted 6 months hence, it would not have retro-active application.

RATIFICATION OF ILWU-PMA AGREEMENT:

It was moved, seconded and unanimously carried by voice vote that the Agreement of October 18, 1960, between the PMA and ILWU be ratified.

(Compl's. Memo. of Exceptions to Initial Decision 1a)

659a

**Complainant's Memorandum of Exceptions to
Conclusions, Findings and Statements in
Initial Decision**

(Filed July 31, 1964)

[1a] Volkswagenwerk Aktiengesellschaft ("VW"), complainant, hereby excepts to the following conclusions, findings and statements in the Initial Decision of Examiner Benjamin A. Theeman, dated June 4, 1964:

1. VW excepts to the Examiner's failure to find that automobiles are burdened more heavily than any other cargo by the assessments on the handling of cargo at Pacific coast ports for the Mechanization and Modernization Fund (the "Fund") of intervener, Pacific Maritime Association ("PMA"), which assessments respondents, Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles) (hereinafter referred to collectively as "MTC"), seek to collect from VW.VW, in particular:

(a) Excepts to the Examiner's failure to find that PMA's Fund assessment, compared with either the total cost of discharge or the total direct labor cost involved in discharge, has an impact on automobiles about ten times as great as upon average general cargo;

(b) Excepts to the Examiner's failure to find that reductions in the Fund assessment with respect to lumber and coastwise trade—bringing the assessment on lumber in this trade to one tenth that on general cargo and one hundredth that on automobiles—were made in order to strengthen the position of PMA member carriers in their competition with outsiders;

(c) Excepts to the Examiner's failure to find that through an assessment on a measurement ton basis the total cost of discharge of VW's automobiles at

(Compl's. Memo. of Exceptions to Initial Decision 1a-2a)

660a

*Complainant's Memorandum of Exceptions to Conclusions,
Findings and Statements in Initial Decision*

United States Pacific coast ports is increased by about 26 percent, while the average increase of the [2a] cost of discharge of all general cargo through PMA's Fund assessment amounts to only a little more than 2 percent; and

- (d) Excepts to the Examiner's failure to find that an assessment on a measurement ton basis on automobiles amounts to about 56 percent of the total direct labor cost involved in the discharge of this cargo while the total Fund assessments levied by PMA against its members represent only about 5 percent of their total shoreside direct labor cost.
- 2. VW excepts to the Examiner's failure to find that the disproportionate assessment of automobiles by PMA for Fund purposes is without any justification. VW, in particular:
 - (a) Excepts to the Examiner's failure to find that PMA levies the Fund assessment for all types of cargo other than automobiles according to the manner in which such cargo happened to be manifested in 1959, and that as to automobiles PMA introduced an assessment practice different from that used for all other cargo, inasmuch as it provided that assessments on automobiles should be made in all cases on a measurement ton basis;
 - (b) Excepts to the Examiner's failure to find that there was not in 1959 and there is not at this time any uniform practice with respect to the manifesting of automobiles, except that automobiles were and are manifested and freighted in the intercoastal and coastwise trade consistently on a weight basis and except that shipments of VW's vehicles and

(Compl's. Memo. of Exceptions to Initial Decision 2a-3a)

661a

*Complainant's Memorandum of Exceptions to Conclusions,
Findings and Statements in Initial Decision*

other automobiles in the foreign trade were and are manifested and freighted most frequently on the basis of the number of units, with an additional indication of weight and, in some instances, of measurement;

[3a] (c) Excepts to the Examiner's failure to find that a measurement assessment on automobiles is particularly inappropriate with respect to the Fund, which involves stevedoring and terminal operations, since measurement has no significant relation to the amount of labor required in the handling of automobiles;

(d) Excepts to the Examiner's failure to find that the discharge at United States Pacific coast ports of automobiles in general and of VW's automobiles in particular was not benefited more, and was probably benefited less, than the discharge of general cargo on the average by the concessions which the International Longshoreman's and Warehousemen's Union made in return for the creation of the Fund;

(e) Excepts to the Examiner's failure to find that the economic effect of PMA's attempted measurement ton assessment on automobiles is to burden the stevedoring and terminal handling of automobiles with substantial expenses which actually relate to the stevedoring and terminal handling of other types of cargo; and

(f) Excepts to the Examiner's statements that (i) the charges for stevedoring of automobiles were on a measurement ton basis, (ii) tonnage membership dues to PMA were reported and paid on that basis and (iii) precedent for collecting the Fund assess-

(Compl's. Memo. of Exceptions to Initial Decision 3a-4a)

662a

*Complainant's Memorandum of Exceptions to Conclusions,
Findings and Statements in Initial Decision*

ment from VW on a measurement basis was well established by the tonnage membership dues.

3. VW (a) excepts to the Examiner's failure to find that through the Fund assessment on automobiles, PMA imposed on automobiles in general and on VW's automobiles in particular a charge which could not be absorbed by MTC and (b) excepts to the Examiner's statement that there is no substantial evidence to support VW's contention that PMA imposed a non-absorbable charge on VW's cargo.

4. VW excepts to the Examiner's failure to find that liner interests dominate over stevedoring and terminal operator interests both in the Board of Directors and in membership meetings of PMA, and that PMA acted in the interest of the liners with respect to the Fund assessment. VW, in particular:

(a) Excepts to the Examiner's failure to find that the by-laws of PMA provide for the election of twenty-one directors comprising at least thirteen representatives of shipping lines;

(b) Excepts to the Examiner's failure to find that of the remaining eight members of PMA's Board of Directors, four are elected through area membership meetings and four are representatives of stevedoring firms and terminal operators, the latter being elected with the votes also of those members who are both steamship operators and stevedoring contractors;

(c) Excepts to the Examiner's failure to find that PMA's by-laws further contain provisions for voting at membership meetings which result in a large

(Compl's. Memo. of Exceptions to Initial Decision 4a-5a)

663a

*Complainant's Memorandum of Exceptions to Conclusions,
Findings and Statements in Initial Decision*

majority of the votes being held by liner interests and a small minority of the votes being held by stevedoring and terminal operator interests;

(d) Excepts to the Examiner's statement that there is no substantial evidence in the record to support VW's contention to the effect that the liner or common carrier interests dominate PMA, particularly in its actions with regard to the Fund assessment and that by reason of such domination PMA, whether acting through its Board of Directors or through membership meetings, would have at heart [5a] primarily the interests of the liners to the particular detriment of VW, a user of chartered vessels:

(e) Excepts to the Examiner's failure to find that in imposing and maintaining the Fund assessment the liner interests dominating PMA deliberately shifted a burden from their own operations to VW's automobiles, a cargo which predominantly uses a method of transportation in competition with liners, i.e., chartered vessels; and

(f) Excepts to the Examiner's statement that the reason why the proposal for assessment of automobiles on a unit basis was considered unacceptable by PMA's second Funding Committee was because of the undesirable effect it would have on the overall Fund program rather than because it would adversely affect liner interests.

5. VW excepts to the Examiner's statements that agreements effected through corporate action of PMA are not subject to the Shipping Act, 1916 (the "Act").

(Compl's. Memo. of Exceptions to Initial Decision 5a-6a)

664a

*Complainant's Memorandum of Exceptions to Conclusions,
Findings and Statements in Initial Decision*

6. VW excepts to the Examiner's conclusion, and to all statements of the Examiner in support of this conclusion, that the cooperative working arrangement found to have been made among members of PMA, including MTC, is not subject to section 15 of the Act.

7. VW excepts to the Examiner's conclusion, and to all statements of the Examiner in support of this conclusion, that MTC and the other members of PMA have not been shown to have made or given any undue or unreasonable preference or advantage to any particular person, locality or description of traffic, or subjected any particular person, locality or description of traffic to any undue or unreasonable prejudice or disadvantage in violation of section 16 of the Act.

[6a] 8. VW excepts to the Examiner's conclusion and to all statements of the Examiner in support of this conclusion, that MTC and the other members of PMA have not been shown to have established, observed or enforced an unjust or unreasonable practice in violation of section 17 of the Act.

9. VW excepts to the Examiner's statement that VW's proposed Findings of Fact submitted to the Examiner numbered 21 (second sentence), 23, 24 (second sentence), 26, 27, 29, 35, 37, 38, 39 and 40 and VW's proposed Conclusions of Law submitted to the Examiner numbered 3 through 7, inclusive, are not justified by the record or are unnecessary for the determination of the issues herein.

(Exceptions of Respondents to Initial Decision 1-2)

665a

**Exceptions and Brief in Support of Exceptions of
Respondents Marine Terminals Corporation and
Marine Terminals Corporation (of Los Angeles)**

(Filed August 3, 1964)

[1] BEFORE THE
FEDERAL MARITIME COMMISSION

[SAME TITLE]

Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles), respondents in Docket No. 1089, except to the initial decision of the Examiner, dated June 4, 1964, in the following respects:

Exception No. 1: To the statement:

"As more fully discussed hereafter, Respondents operate terminal facilities in the respective ports and are clearly 'other persons' subject to the Act" (Initial Decision "I.D.", 4-5)

Exception No. 2: To the statement:

[2] "There is no doubt that Respondents are other persons subject to the Act. Respondents as members of PMA voted with the other members of PMA to approve the January 10, 1961 resolution. At that time they were admittedly furnishing terminal facilities to common carriers by water. At all times herein involved while supplying stevedoring services to the chartered ships of Volkswagen the record shows and Respondents admit they were supplying terminal facilities, not only to Volkswagen, but also to other common carriers." (I.D., 26)

(Report of Commission 1)

666a

Report of the Commission

Exception No. 3: To the statement:

"Evidence in the record indicates that Respondents and other stevedoring contractors may have entered into an agreement some time after January 10, 1961 to the effect that the automobile Mech Fund assessment could not be absorbed and that it should be passed on to the customer in the shipping rate. Such an agreement may well be within the purview of Section 15." (I.D., 38)

• • •

Report of the Commission

(Filed October 13, 1965)

[1] FEDERAL MARITIME COMMISSION

No. 1089

VOLKSWAGENWERK AKTIENGESELLSCHAFT

v.

MARINE TERMINALS CORPORATION, ET AL.

Agreement between members of Pacific Marine Association, including respondents, establishing the method of assessing and collecting contributions to pay their obligation under an agreement with the International Longshoremen's and Warehousemen's Union found not subject to section 15 of the Shipping Act, 1916.

(Report of Commission 1)

667a

Report of the Commission

Respondents' having included the assessment in its entirety in their rate to Volkswagen for discharging automobiles found not to have violated sections 16 and 17 of the Act.

Stanley S. Madden and Walter Herzfeld, attorneys for Volkswagenwerk Aktiengesellschaft, complainant.

Bryant K. Zimmerman, attorney for Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles), respondents.

Edward D. Ransom and Gary J. Torre, attorneys for Pacific Marine Association, intervener.

BY THE COMMISSION: (John Harllee, Chairman; Ashton C. Barrett and James V. Day, Commissioners.)

This proceeding arises out of a complaint filed by Volkswagenwerk Aktiengesellschaft (Volkswagen or VW) involving the payment of certain charges imposed by respondents Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles), for services rendered in discharging complainant's automobiles at respondents' terminals in San Francisco and Los Angeles.

Pacific Marine Association (PMA), a corporation composed of carriers, marine terminal operators and stevedore contractors on the Pacific Coast, which acted as collective bargaining unit for these groups in their negotiations with the International Longshoremen's and Warehousemen's Union (ILWU), intervened. Respondents are members of PMA.

An Initial Decision was issued by Examiner Benjamin A. Theeman, exceptions and replies thereto were filed, and oral argument was heard.

(Report of Commission 2)

668a

Report of the Commission

[2] FACTS

Beginning in 1957 ILWU and PMA entered into a series of negotiations in an attempt to correct some of the inefficient practices that were prevalent in stevedoring on the Pacific Coast and to allow for the introduction by employers of labor saving devices in connection with the work of cargo handling. In return for this concession to management, the workers were to share in the savings made possible by the reduction in wage costs.

On August 10, 1959, PMA entered into an agreement with ILWU to raise a \$1½ million dollar fund for the benefit of the work force. The agreement did not state how the sum was to be raised, but it was accumulated by PMA's assessing its members on a man-hour basis. The fund, called "Mechanization and Modernization" fund (hereinafter "Mech" fund) was subsequently expanded to \$29,000,000 to be accumulated over a 5½ year period by an agreement entered into between ILWU and PMA, subject to ratification by their respective memberships, on October 18, 1960. The method of collecting the fund from the PMA membership was reserved to PMA.

In January 1961, a committee of PMA studied alternative methods of assessing members for collection of the "Mech" fund. The majority of the committee recommended that all members be assessed on a straight percentage of tonnage carried with bulk cargoes assessed at 1/5 the general cargo rate as was the practice with respect to the assessment of a part of the PMA dues. This determination was based upon the feeling that an assessment geared to "man-hours" would unfairly result in least assessing those who had profited most from new and improved cargo handling methods. A minority report recommended a combined man-hour/tonnage method of assessment, as was made with respect to PMA dues. The minority reasoned that such a formula would not unduly favor

(Report of Commission 2-3)

669a

Report of the Commission

those who would save most in man-hours. At the same time it would not unduly penalize those who would benefit most from the elimination of restrictive work practices. The majority position was adopted by PMA.

On November 15, 1961, a "Supplemental Agreement" effective January 1, 1961, was executed by ILWU and PMA ratifying the agreement of October 18, 1960.

[3] The tonnage formula has remained in effect since January 16, 1961, when payment to the fund began, although the amounts were increased in December 1961, from $27\frac{1}{2}\text{¢}/\text{ton}$ to $28\frac{1}{2}\text{¢}/\text{ton}$ on general cargo and $5\frac{1}{2}\text{¢}/\text{ton}$ to $9\text{¢}/\text{ton}$ on bulk cargo. An additional assessment of members based on 15 cents per clerk-man-hour was made at this December meeting and was added by respondents to their charges against VW which bore it without protest.

Subsequently, in July 1962, the rate of assessment on coastwise lumber was reduced to $5\text{¢}/\text{ton}$ on the theory that such cargo was already subjected to penalty handling rates of \$1.00/hr. straight time and \$1.50/hr. overtime.

Volkswagen had persistently refused to pay respondents "Mech" fund assessments which they here found necessary to pass on to it in order to carry on their operations on a profitable basis. The vast majority of the carrying of Volkswagen on the Pacific Coast (75 percent) are by vessels chartered by VW, and at the terminals of respondents 90 percent of all autos unloaded are those of complainant. A common carrier carrying complainant's autos, Wallenius Line, also protested and refused to pay the "Mech" fund assessments passed on to it.

Respondents and other terminal operators sought to have the form of assessment on automobiles modified. PMA had required the automobile tonnage assessment to be based upon measurement tons, rather than weight tons, regardless of how manifested. There is no uniform way of manifesting automobiles. In the foreign trades they

(Report of Commission 3-4)

670a

Report of the Commission

are manifested on a unit basis on chartered ships, but weight and sometimes measurement is shown. On common carriers both weight and measurement are shown. Tariffs are on a unit basis but dependent upon measurement. In the coastwise trades, autos are manifested and freighted by weight. General cargo is assessed as manifested. This form of assessment increased Volkswagen's cost of discharge some 25 percent. The tonnage portion of the dues of respondents on automobiles had, since 1958, been assessed on a measurement ton basis.

[4] At the PMA meetings of January 1961, respondents expressed their opinion that it would be impossible for them to absorb the "Mech" fund assessments, and it appears that the stevedore members of the PMA in general felt that they could not absorb the whole assessment. Although some stevedores indicated that it might be necessary to pass on the assessment in the stevedoring rate to their customers, several witnesses, both for respondents and PMA, testified that there was no understanding among the PMA members as to whether the assessment would be passed on to the customers or absorbed by the members themselves.

The Funding Committee of PMA in February 1961, reaffirmed its position with respect to automobiles, and this was adopted by the Board of Directors in March of 1961.

Several stevedores, including respondents, attacked the method of assessing automobiles as arbitrary and suggested a unit method of assessment. The Funding Committee rejected the proposal in December 1961, and the rejection was affirmed by PMA in March 1962.

Respondents concede that the method of assessment against automobiles on a tonnage basis is unfair, as stevedoring of cars has always been an efficient and economical operation, and testimony in the record shows that there is little likelihood of mechanical improvement in the method of unloading automobiles, and auto shippers will probably

(Report of Commission 4-5)

671a

Report of the Commission

receive only general benefits from the fund plan, such as freedom from strikes or slowdown.

Aware of Volkswagen's dissatisfaction, respondents some time afterward offered Volkswagen a lower rate whereby respondents would absorb an amount equal to that if the assessment had been made on a weight ton basis. Volkswagen rejected this offer and stated it would not pay the "Mech" fund charge in the rate if it were based on a measurement ton basis. Since Volkswagen was satisfied with respondents' discharging operations, Volkswagen continued to use them.

[5] Testimony indicates that stevedore members of PMA passed on the "Mech" fund assessments to common carrier members of PMA. The record also indicates that these carriers in turn absorbed the increases as it was stated that there was no increase in ocean freight rates due to the passing on to the carriers of the "Mech" fund assessments.

Some terminal operators may have absorbed the assessments in whole or in part, rather than pass them on to shippers when the services were performed directly for the shippers rather than for the common carriers. There is no showing as to the level of rates for terminal services charged by PMA members either before or after the establishment of the "Mech" fund.

PMA filed a libel against respondents in the United States District Court for the Northern District of California, Southern Division, demanding payment of unpaid "Mech" fund contributions from each respondent as a PMA member. By respondents' interpleader, Volkswagen was made a party to the Court action. Upon Volkswagen's request the Court stayed the proceedings therein, pending submission of the following issues to the Commission for determination:

1. Whether the assessments claimed from [Volkswagen] are being claimed pursuant to an

Report of the Commission

agreement or understanding which is required to be filed with and approved by the Federal Maritime Commission under Section 15 of the Shipping Act, 1916, as amended, 46 U. S. C. 814 (1961), before it is lawful to take any action thereunder, which agreement has not been so filed and approved.

2. Whether the assessments claimed from [Volkswagen] result in subjecting the automobile cargoes of [Volkswagen] to undue or unreasonable prejudice or disadvantage in violation of Section 16 of the Shipping Act, 1916, as amended, 46 U. S. C. 815 (1961).

[6] 3. Whether the assessments claimed from [Volkswagen] constitute an unjust and unreasonable practice in violation of Section 17 of the Shipping Act, 1916, as amended, 46 U. S. C. 816 (1961).

Thereafter Volkswagen filed the complaint in this proceeding alleging that respondents, other PMA members and PMA had conspired or agreed to impose an extra charge on Volkswagen for terminal services in discharging VW's in violation of sections 15, 16 and 17 of the Act.

THE EXAMINER'S DECISION

The Examiner found that respondents, as parties to car-loading conferences approved by the Commission and operators of terminal facilities were "other persons" subject to the Shipping Act, 1916. He further found that the "Mech" fund agreement which respondents had entered into with the other members of PMA, all of whom he found to be common carriers or "other persons" subject to the Act, was a "cooperative working arrangement." He concluded, however, that as the agreement contained no obligation upon the members of PMA to pass the "Mech" fund assessments on to shippers, the agreement was not the type

(Report of Commission 6-7)

673a

Report of the Commission

of "cooperative working arrangement" intended to be included within section 15 as it did not "deal with" or "pertain to" "ocean transportation" and was not one of "the same general class" as the six categories of agreements specifically enumerated in section 15.¹ He therefore found no violation of section 15 in PMA's failure to file its "Mech" fund agreement.

[7] The Examiner found no violation of section 16 as no "prejudice or disadvantage" to VW was shown by the method of assessment as all cars were assessed by the measurement formula.

The Examiner found no "unreasonable practice" under section 17 to exist with reference to the respondents' handling of Volkswagens as all autos were assessed on the same basis, Volkswagen never objected to the portion of the dues which was assessed on a measurement basis, and passed on to it, and respondents had offered to compromise the matter by absorbing a part of the assessment.

DISCUSSION AND CONCLUSIONS

We have reviewed the exceptions of Volkswagen to the Initial Decision of the Examiner. Even if we assume all of the members of PMA are "other persons" within the meaning of the Shipping Act, 1916, we find nothing in the agreements of record in this proceeding which brings them within the purview of section 15.

Although the literal language of section 15 is broad enough to encompass any "cooperative working arrange-

¹ These are agreements "fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried. . . ."

(Report of Commission 7-8)

674a

Report of the Commission

ment" entered into by persons subject to the Act, the legislative history is clear that the statute was intended by Congress to apply only to those agreements involving practices which affect that competition which in the absence of the agreement would exist between the parties when dealing with the shipping or travelling public or their representatives.² *D. J. Roach Inc. v. Albany Port District et al.*, 5 FMB 333, 335.

Thus, for example, while agreements of persons subject to the Act to pool secretarial workers or share office space may literally be "cooperative working arrangements," they are not the type of agreements which affect competition by the parties in vying to serve outsiders and hence are not [8] subject to section 15. On the other hand, agreements relating to the method of fixing or determining the levels of rates, fares, charges or commissions paid to or by shippers, passengers, forwarders, brokers, agents, etc., have the type of competitive relationship to bring them within the scope of section 15.

As the courts have pointed out, our statute "... In its general scope and purpose, as well as its terms, ... closely parallels the Interstate Commerce Act; and we cannot escape the conclusion that Congress intended that the two acts, each in its own field, should have like interpretation, application and effect. It follows that settled construction in respect of the earlier act must be applied to the later one, unless, in particular instances, there be something peculiar in the questions under consideration, or dissimilarity in the terms of the act relating thereto, requiring a

² Recommendations of the "Alexander Committee," Proceedings of the Committee on the Merchant Marine and Fisheries in the Investigation of Shipping Combinations under H. Res. 587, p. 415, *et seq.*—See also Hearings before the Special Subcommittee on Steamship Conferences of the Committee on Merchant Marine and Fisheries, on H.R. 4299, 87th Cong., 1st Ses. (1961) at page 428.

Report of the Commission

different conclusion." *United States Navigation Company, Inc. v. Cunard Steamship Co., Ltd.*, 284 U. S. 474.

Section 5(1) of the Interstate Commerce Act (49 U. S. C. 5) provides for jurisdiction of the ICC over "Combinations and consolidations of carriers" establishing "Pooling, division of traffic, service, or earnings."

The courts, in construing this section, have determined that agreements which affect only labor-management relations do not come within its scope. A showing has been required, before labor-management agreements have been held to be subject to the jurisdiction of the ICC, that they have some impact upon the competitive relationship of those entering into them. "Section 5(1) empowers the Commission to exempt pools from the prohibition of the statute which it determines will not unduly restrain competition and will result in better service to the public or economy in operation, the broad sweep of the section does not encompass pools whose sole concern is labor-management relations." *Kennedy v. Long Island Railroad*, 211 F. Supp. 478, 489 (1962), affd. 319 F. 2d 366 (2d Cir. 1962).

It is not contested that the membership of PMA entered into an agreement as to the manner of assessing its own membership for the collection of the "Mech" fund. Such an agreement, however, does not fall within the [9] confines of section 15 as, standing by itself, it has no impact upon outsiders. What must be demonstrated before a section 15 agreement may be said to exist is that there was an additional agreement by the PMA membership to pass on all or a portion of its assessments to the carriers and shippers served by the terminal operators.

The record is devoid of evidence showing the existence of such an additional agreement. The record at most shows that some stevedores expressed the opinion that it might be necessary to pass on the assessment in the stevedoring rate to their customers. That these opinions were the basis for an agreement as to the manner of assessing their customers

Report of the Commission

is denied by statements of witnesses for both PMA and respondents. Such conclusion is further vitiated by the actions of respondent and perhaps other terminal operators, who were willing to absorb a part of the assessment.

To hold that a section 15 agreement existed on this record would require us to disregard explicit statements to the contrary as well as actions on the part of both the common carrier members of PMA and respondents inconsistent with the existence of such an agreement. We would moreover, be obliged to reach the anomalous result of finding an agreement in spite of both testimony and conduct negating such an agreement, and then finding that such conduct was a breach of the agreement. It seems much more logical and less contrived simply to conclude that there was no agreement on the part of the PMA members to pass on the "Mech" fund assessments.

We conclude, therefore, that no violation of section 15 has been shown.

Volkswagen itself admits that all of the relevant case law requires a showing that competitive cargo has been preferred to sustain an allegation of a violation of section 16. It further admits that its automobiles have not been subjected to "prejudice or disadvantage" as compared to other automobiles, and that "there is no other cargo classification in competition with automobiles." We therefore uphold the Examiner in finding no violation of section 16.

[10] Complainant's allegation of a violation of section 17 is that the passing on by respondents of the "Mech" fund assessment on automobiles on a measurement rather than a weight basis constituted an "unreasonable practice . . . relating to . . . the handling of property." It does not contest the propriety of the passing on of the assessment to it and states that the alleged discrimination would be removed if the assessment were made on a weight or unit basis.

(Report of Commission 10-11)

677a

Report of the Commission

It is true that the assessing of automobiles on a measurement basis results in an assessment ten times as great as would result from a weight basis, and that although other cargo is assessed as manifested, automobiles are always assessed on a measurement basis. It is further true that although the assessment on a measurement basis for some general cargo items exceeds the amount computed on a weight basis, in no instance is the difference as great as on automobiles, and that as there is little likelihood of mechanical improvement in the method of unloading automobiles, auto shippers will probably receive only general benefits from the fund plan, such as freedom from strikes or slowdown.

However, as complainant admits, there is no statutory requirement that all users of a facility be assessed equally. As long as "substantial benefits" are provided for one against whom a charge is levied, we will not normally declare the charge unlawful. *Evans Cooperage Co., Inc. v. Board of Commissioners*, 6 F.M.C. 415. The fact that the benefits may differ to some extent in both kind and degree is not material. An exception to the above principle might arise if it could be shown that the leviers of a charge imposed it in an unequal fashion because of a design deliberately to burden one of the users of its service more than another.

The assessment here, however, has been levied in its present form because it was necessary in the business judgment of respondents to do so. The reasonableness of respondents' activities is attested to by the additional facts that they have sought to change the method of "Mech" fund [11] assessment on automobiles, have offered to pass on only a part of the assessment, and have levied a part of their dues assessment against Volkswagen for several years upon the same measurement basis without protest.

(Report of Commission 11-12)

678a

Report of the Commission

We agree with the Examiner that there has been no showing that the assessment against Volkswagen is an "unreasonable practice" within the meaning of section 17.

The complaint is dismissed.

Commissioner John S. Patterson dissenting:

Based on the record before me in this proceeding, my conclusions are as follows:

1. Respondents Marine Terminals have failed to file immediately (a) an agreement with common carriers by water and other persons regulating transportation rates and controlling and regulating competition among each other and (b) any memorandum of a cooperative working arrangement on the aforesaid subjects in violation of Sec. 15 of the Act. (Findings 1, 2, 3, 4 and 5)

2. Respondents Marine Terminals in conjunction with common carriers by water and other persons indirectly have subjected property and persons to undue and unreasonable prejudice and disadvantage in violation of Sec. 16 of the Act. (Findings 1, 2, and 6)

3. Respondents Marine Terminals have failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property contrary to Sec. 17 of the Act. (Findings 1, 2, and 7)

[12] As regards the conclusions stated above, the reasons in support of them and my dissent are advanced as follows:

INTRODUCTION

This proceeding was initiated by a complaint by Volkswagenwerk Aktiengesellschaft (VW) against Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles) (both referred to as "Marine Terminals"), alleging that Respondents Marine Terminals were parties

(Report of Commission 12-13)

679a

Report of the Commission

to an agreement with certain persons identified as both common carriers by water and other operators of terminal facilities to impose an "extra charge" for terminal facilities, including stevedoring and other terminal services. The "extra charge" was for the purpose of collecting "an assessment" imposed on Respondents by Pacific Maritime Association, of which Respondents are members, for contributions pursuant to a Supplemental Agreement on Modernization and Mechanization as hereinafter described.

The agreement to collect the extra charge was claimed to be subject to Sec. 15 of the Shipping Act, 1916 (Act), providing:

"That every common carrier by water, or other person subject to this Act, shall file immediately with the Commission a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; . . . controlling, regulating, preventing, or destroying competition; . . . or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term 'agreement' in this section includes understandings, conferences, and other arrangements."

Even after the agreement is filed pursuant to the first paragraph of Sec. 15, it is further claimed it may not be approved [13] pursuant to the second paragraph of Sec. 15 because the agreement is "unjustly discriminating and unfair as between shippers and importers, operates to the detriment of the commerce of the United States, is contrary to the public interest," (Complaint, VI), "subjects complainant and its automobile cargoes to undue and unreasonable prejudice and disadvantage" (Complaint, VII),

(Report of Commission 13-14)

680a

Report of the Commission

and "by establishing regulations and practices which are not just and reasonable" (Complaint, X. (5)), is contrary to law in violation of Secs. 15, 16, and 17 of the Act.

The complaint originated in response to an order of November 29, 1962, by the District Court for the Northern District of California, Southern Division, No. 28599 in Admiralty, granting a motion for a "Stay of Proceedings" on a libel petition on condition that there be a "submission to the Federal Maritime Commission and final determination by it, or by a court of last resort upon appeal from such Commission action" of the following issues:

"1. Whether the assessments claimed from respondent impleaded are being claimed pursuant to an agreement or understanding which is required to be filed with and approved by the Federal Maritime Commission under Section 15 of the Shipping Act, 1916, as amended, 46 U. S. C. 814 (1961), before it is lawful to take any action thereunder, which agreement has not been so filed and approved.

"2. Whether the assessments claimed from respondent impleaded result in subjecting the automobile cargoes of respondent impleaded to undue or unreasonable prejudice or disadvantage in violation of Section 16 of the Shipping Act, 1916, as amended, 46 U. S. C. 815 (1961).

"3. Whether the assessments claimed from respondent impleaded constitute an unjust and unreasonable practice in violation of Section 17 of the Shipping Act, 1916, as amended, 46 U. S. C. 816 (1961)."

[14] The Admiralty proceeding was initiated by the Pacific Maritime Association as a Libelant against Marine Terminals as one of the Respondents for refusal to pay

(Report of Commission 14-15)

681a

Report of the Commission

\$67,004.27 assessments of contributions to a Mechanization and Modernization Fund created pursuant to the Supplemental Modernization Agreement. Marine Terminals petitioned to implead Volkswagen, stating the reason Marine Terminals had not made the assessed contributions was that VW contends that assessments under the Supplemental Agreement and Modernization and Mechanization "are unlawful and that neither libelant nor respondents can lawfully collect assessments pursuant to said Agreement". VW was impleaded and thereafter filed its complaint with us.

Pacific Maritime Association (PMA), which describes itself as "a non-profit association existing under the laws of the State of California", filed a petition to intervene in opposition to the complaint. The petition was granted.

The majority has dismissed the complaint and decided the Examiner should be upheld in finding no violation of Secs. 16 and 17 of the Act.

My dissent to the dismissal is set forth in the following facts, findings, and discussion in support of the findings and conclusions.

FACTS

Because the content of facts as stated in the majority report are considered to be too meager a basis for decision, it is deemed essential to expand the scope of facts by advancing from the record before me the following 29 adequate statements [15] of fact upon which my findings and ultimate conclusions are grounded.

1. Complainant VW is a shipper of automobiles from the Federal Republic of Germany through United States Pacific Coast ports. Automobiles are shipped on both chartered ships in private carriage and on "liners" which are the same as common carriage. The number of VW automobiles imported through Pacific Coast ports during 1961 and 1962 were as follows:

(Report of Commission 15-16)

682a

Report of the Commission

	<i>Common Carrier (Liners)</i>	<i>Private Carrier (Charter)</i>
1961	9,363	29,111
1962	13,672	28,296

(Ex. 52)

2. Respondents Marine Terminals are in the business of furnishing ship loading and unloading and storage activities in their terminal facilities located at San Francisco and Long Beach, California (Tr., 202-206) Facilities are available and furnished to both common and private carriers (Tr., 203-204), but about 90% of Respondents' work is in connection with common carriers. (Tr., 236) Marine Terminals have provided facilities for VW since 1954 at both San Francisco and Long Beach. (Tr., 203-204)

3. a. Marine Terminals furnish the following to VW in connection with both common and private carrier by water shipments:

(1) unlapping and unchecking cars;

(2) removal of cars from ship to pier by means of a patent bridle device to pick up vehicles from the hold;

[16] (3) removal from shipside to storage area by means of tractors which push or pull, using special hooks, vehicles to the point of rest in the storage area; (Tr., 229-231)

(4) guard service, cleaning, lighting, heating, and maintenance of the terminal area; (Tr., 251-252)

(5) fenced-in storage areas where vehicles are surveyed, sorted into dealer lots, and made avail-

(Report of Commission 16-17)

683a

Report of the Commission

able for inland transportation by trucks. (Tr., 207, 231)
(Exh. 51)

The unloading services are performed by groups of laborers called "gangs" composed of ILWU members working both aboard the ship and on terminal property. (Tr., 207-208, 211) The men working on the docks are called the "dock gangs". They haul automobiles from the ship's side and sort the automobiles. The gangs working exclusively aboard the ships perform what is called the "function of the ship". (Tr., 206-207). Marine Terminals charged VW \$10.45 per vehicle for the above services, regardless of model, size, or weight, during the period covered by the record. (Tr., 205, 207, 210, 214, 279)

b. A typical "work order" called for the following to be covered by charges:

"(1) Opening and closing of hatches, rigging and unrigging, opening of cardeck hatches.

"(2) Unlashing and unchocking of cars (Hercules round-lashings not to be cut but to be collected on board for further use).

"(3) Waiting time of 30 minutes or less whether in stevedores' control or not, but breakdown of ship's gear excepted.

[17] "(4) Travel-time and transportation of long-shoremen and equipment to and from vessel.

"(5) Supply of discharging gear in accordance with Volkswagenwerk instructions.

"(6) 10 days free storage.

"(7) The stevedores will provide all necessary stevedoring labor including winchmen, hatch tenders,

(Report of Commission 17)

684a

Report of the Commission

tractor operators, also foremen and such other stevedore supervision as is needed for the proper and efficient conduct of work.

"(8) Checking, clerking and supercargo.

"(9) Public liability and property damage insurance, including third party risk, in respect of injuries arising from stevedoring operations, also taxes and Pacific Maritime Association assessments.

"(10) For handling cars from ship's tackle to place of rest \$6,—per car are to be collected from consignees and credited to vessel within the disbursements account.

"REMARKS:

Wharfage on cars at \$3,—per 2,000 lbs for uncrated cars to be for consignees' account."

(Exh. 51)

4. a. Marine Terminals is a member of PMA, intervenor herein, an association incorporated June 3, 1949, composed of members meeting the following qualifications as shown in its By-Laws as amended to April 1960 (Exh. 3), Article IV, Section 1:

"Section 1. Any firm, person, association or corporation engaged in the business of carrying passengers or cargo by water to or from any port on the Pacific Coast of the United States (except Alaskan ports), or any agent of any such firm, person, association or corporation, and any firm, person, association or corporation employing longshoremen or other shoreside employees in operations at docks or marine terminals at any such port and any association or corporation composed of employers of such longshoremen or other shoreside employees

(Report of Commission 17-18)

685a

Report of the Commission

shall be eligible for membership in this corporation."

The record shows 116 members meeting these qualifications for the year 1961. (Exh. 47—"Membership Roster")

[18] b. Intervenor PMA includes in its membership several common carriers by water such as American President Lines, Ltd., American Mail Line, Ltd., Matson Navigation Company, Pacific Far East Line, Inc., States Steamship Company, and United States Lines Company as American-flag carriers and many foreign-flag common carriers by water. (Exh. 47)

5. The corporate powers of PMA are "vested in and exercised, conducted and controlled by a Board of twenty-one (21) Directors, who need not be members of the corporation". Art. I) Among PMA's powers is the power to "levy and assess and collect . . . dues or assessments . . ." not in excess of a maximum rate to be fixed at a regular or special meeting. (Art. III, Sec. 1(e))

6. A Memorandum of Agreement on Mechanization and Modernization of October 18, 1960 (Exh. 1 sub B) between PMA and the ILWU provided that PMA would "establish a jointly trustee Fund" (par. 38) to include specified amounts to be accumulated (par. 39). The purposes for which accumulations in the fund were to be used were stated (pars. 40-42). The terms of the Memorandum of Agreement were incorporated in a superseding "ILWU-PMA Supplemental Agreement on Mechanization and Modernization" (Modernization Agreement) entered into as of the 1st day of January 1961, signed for the Union on November 15, 1961, by Harry Bridges and for the Association by J. Paul St. Sure. The Fund provisions are as follows:

Report of the Commission

"1. *Amount and Rate of Accumulation.* Commencing January 1, 1961, and continuing for a period of five and one-half years ending June 30, 1966, a Mechanization [19] Fund shall be established, subject to the provisions of Section 3 of Article V hereof, at the rate of Six Million Five Hundred Thousand Dollars (\$6,500,000) during the first year, Five Million Dollars (\$5,000,000) during each of the next four years, and Two Million Five Hundred Thousand Dollars (\$2,500,000) during the next succeeding six months, for a total of but not exceeding Twenty-nine Million Dollars (\$29,000,000)." (Exh. I, Sub C, Art. II, par. 1)

7. The Modernization Agreement provides, with regard to contributions to raise the above amounts, "Principals who are Member Companies shall be responsible therefor to the extent the Association determines pursuant to its by-laws and in its sole discretion." (Id., Art. II, par. 2) Member Companies are defined in Art. I as companies who are members of the Association and are subject to several specified collective bargaining agreements "respecting employment of Employees." The "Association" referred to is PMA. (Id., Art. I, pars. 2 and 3) "Principals" are member companies "who do not employ directly Employees but who obtain stevedoring, terminal or similar related services under contracts . . .". (Id., Art. I, par. 6) "Contributions" are assessments required under "arrangements adopted by the Association, pursuant to its by-laws . . .". (Id., Art. I, par. 8)

8. For the purpose of adopting arrangements to discharge the responsibility to make the assessments needed to raise the specified contributions, PMA appointed a committee consisting of a representative from American President Lines, Ltd. (APL), Matson Navigation Company

Report of the Commission

(Matson), and Pacific Far East Line, Inc. (PFEL), operators of U. S. registered ships as "common carriers by water" as defined in the first section of the Act, [20] Holland America Line (Holland America), Union Steamship Company of New Zealand (Union), common carriers by water, and Overseas Shipping Company (Overseas) (status not clear in record). (Exh. 5) The committee's report on work improvement fund contributions procedures consisted of a majority report subscribed to by the Chairman on behalf of APL, Union, Holland America, and Overseas, and a dissent by Matson and PFEL. (Exh. 5, sub A)

a. The majority recommended an arrangement for dividing the costs of the ILWU Modernization and Improvement Fund set forth in the Memorandum of Agreement with the ILWU of October 18, 1960, whereby contributions to the fund are to be "based on cargo tonnage basis" (Exh. 5-A, p. 1) with an annual review by the Association to determine the equity of the formulas as conditions change. (Exh. 5, Sub A, p. 1) The report states, "the committee recommends that the contributions to the Fund be raised on a cargo tonnage basis . . .", but the committee's deliberations "centered on three methods of contribution . . . (1) contributions based on straight time man-hours of each employer, (2) contributions based on manifested cargo tonnage, (3) a combination of (1) and (2). In the text reference is made to "the same as the present tonnage formula" which is "the cargo is that manifested for loading or discharging at Pacific Coast ports". (p. 5) The "manifesting" qualification was an essential part of the committee's report which was adopted by the membership. (See also p. 7, referring to "the proposed charge on manifested tonnage". Whatever the manifest showed was to be the guide.) (Note: The costs of the fund are those [21] set forth in Article II, par. 1, of the Modernization Agreement which incorporated, with revisions, the provisions of par.

(Report of Commission 21-22)

688a

Report of the Commission

39 of the Memorandum of Agreement of October 18, 1960. The former Agreement was not drafted in final form and signed and sealed until November 15, 1961, but was entered into "as of" January 1, 1961. The committee report was dated January 4, 1961.)

b. The minority reported that the formula should be based on a combination whereby part of the fund would be accumulated by tonnage assessments and part by man-hour assessments with a 40%-60% proportion to begin with, subject to correction in the light of experience. (Exh. 5, Sub. B, 10-11)

9. The committee's majority report was considered by the Board of Directors at a meeting on January 6, 1961, and after "considerable discussion" of the committee's report "it was moved and seconded that the collection of the Fund be based on a tonnage formula with all tonnage being treated equally as to rate for a period of six months . . ." The Minutes show the vote on the motion was 12 "yes", 3 "no" and 3 "withheld", followed by the notation "Motion carried", and were subscribed by J. A. Robertson, Secretary. (Exh. 2-P)

10. The Board of Directors' action was considered by the membership at a meeting on January 10, 1961. Respondents were shown as "Present", represented by Messrs. C. R. Redlich and E. G. Horsman, along with representatives of about 81 members (not counting names of members appearing more than once) and staff personnel including the President of PMA. The Minutes showed the "three recommendations which had been made" as explained by the Chairman:

[22] "It was regularly moved and seconded that the Majority recommendation of the Committee ap-

(Report of Commission 22)

689a

Report of the Commission

pointed to propose a method for collection of the Fund, calling for a tonnage formula with bulk cargoes at one-fifth the general cargo rate, be adopted, with the understanding that the method of collection will receive continued study and be presented to the Membership again in six months.

"The Chairman explained the three recommendations which had been made:

1. *Majority Report* (on which the motion is based)

26 $\frac{3}{4}$ ¢ on general cargo
5 $\frac{1}{2}$ ¢ on bulk

2. *Minority Report*

10¢ a ton
12¢ per manhour

3. *Board of Directors*

20¢ a ton

"It was further agreed that the Board of Directors would examine and determine the definition of bulk cargoes."

followed by the notation that "a secret ballot was taken and the vote polled as follows:

246 yes

74 no

21 withheld

67 absent"

"Motion carried by a majority of the total voting strength¹ of the Association Membership". The Agreement of October 18, 1960, between PMA and ILWU was

(Report of Commission 22-23)

690a

Report of the Commission

ratified unanimously. The minutes were duly subscribed by the Secretary. (Exh. 2-O) As of January 1, 1961, all cargo is to be measured for assessment purposes on tonnages as shown in ships' manifests.

[23] 11. The record shows no challenge or question as to the regularity of the vote by either the directors or the members. The By-Laws provide that any contract made by PMA on behalf of its members with a union "shall bind the members" except that any member who has not voted or otherwise approved a commitment can relieve himself by resignation within seven days from the vote thereon. (Exh. 3, Article XI, secs. 1 and 3) The record shows no resignations.

12. The Board of Directors at a meeting on January 16, 1961, adopted a motion "that unpackaged scrap metal . . . is to be classified as a bulk cargo . . . effective as of January 16, 1961" and agreed "that the tonnage declarations made by companies are to be made in exactly the same manner as manifested and reported during the year 1959. . .". This action had the effect of adding the "during the year 1959" qualification to the "as manifested" qualification. The minutes were duly subscribed by the Secretary. (Exh. 2-N)

13. The Vice President and Treasurer of PMA in a circular letter of February 3, 1961, wrote members on the subject, "Cargo dues—Tonnage—Automobiles", after noting automobiles were being reported on a weight basis: "Any steamship company or contracting stevedore who has not been reporting and paying dues on automobiles on a

¹ Members have different numbers of votes as prescribed in Article VI of the By-Laws. Votes at the membership meetings depend upon a formula which gives effect to the volume of cargo handled by each member at certain ports and to the number of personnel employed. (Art. VI, Sec. 1.)

(Report of Commission 23-24)

691a

Report of the Commission

measurement basis since January 1958 should immediately complete a revised tonnage declaration form. . . Future reports on automobiles for PMA dues and Modernization and Improvement Fund purposes are to be made on a measurement basis". (Exh. 36) A February 24, 1961, communication to [24] "committee members", referring to a February 21, 1961, meeting of members, stated:

"(4) The Mechanization Fund assessment for autos should be on a measurement ton basis, regardless of how manifested. 8 agree, none oppose." (Exh. 44)

As of February 21, 1961, the qualifications "as manifested" and "during the year 1959" disappeared and were replaced by "a measurement basis" in regard to automobiles only.

14. The Board of Directors at its regular quarterly meeting on March 8, 1961, approved changes (a) in assessments for full and empty "Army conexes" and (b) to provide that "coastwise cargo be assessed in the traditional manner at the rate of one-half the Work Improvement Fund rate for offshore and intercoastal cargo; that is, a single ton of coastwise cargo would pay a total of 27½¢ assessment, one-half at the point of loading and the other half at the point of discharge." The minutes were duly subscribed by the Secretary. (Exh. 2-M)

15. As of December 18, 1961, PMA reduced the tonnage assessment on lumber, logs, and automobiles to 24½¢, but added 4¢ for the Walking Bosses and Foremen's Mechanization Fund and an assessment of 15¢ per man-hour "on all ship clerk hours". (Exh. 56, meeting 12-13-61)

16. The minutes of the annual meeting of members on March 13, 1961, show unanimous ratification "of all

(Report of Commission 24-25)

692a

Report of the Commission

actions of the Board of Directors and Association Committees during the year 1960". The minutes were duly subscribed by the Secretary. (Exh. 2-L) The minutes of the meeting of members on May 14, 1962, show "that the Membership action of March 14, [25] 1962 [the defeat of the motion ratifying all action of the Board of Directors and Association Committees during the year 1961] be and hereby is rescinded and that all actions . . . during the year 1961 be ratified." The motion was carried and on another vote was "made unanimous", and the minutes were duly subscribed by the Secretary. (Exh. 2-G)

17. The minutes of the Directors Meeting on July 3, 1962, show a motion unanimously carried that "the contribution rate on all lumber moving in the coastwise trade shall be \$.05 per ton, 2½¢ of which is paid at the port of loading and 2½¢ at the port of discharging". The minutes were duly subscribed by the Secretary. (Exh. 2-F)

18. The minutes of the Directors Meeting on December 12, 1962, show a motion unanimously carried "that the contribution rate to the Walking Boss Mechanization Fund be 2¢ per ton effective January 1, 1963" instead of 4¢ per ton as before. The minutes were duly subscribed by the Secretary. (Exh. 2-D)

19. At the annual meeting of the members of PMA on March 14, 1963, "all actions of the Board of Directors and Association Committees during the year 1962" were ratified by motion "unanimously carried". The minutes were duly subscribed by the Secretary. (Exh. 2-A)

20. The several "actions", resolutions, and adopted motions of members of PMA were acted on by those members providing terminal facilities and wharfage, including Respondents, by charges to VW and other users by seeking

(Report of Commission 26-27)

693a

Report of the Commission

collection from shippers and by being billed separately by Respondents. (Exhs. 9, [26] 23, 32) One member of PMA informed a PMA official that the cost of the assessment on automobiles is so much greater "as compared to the stevedoring cost" that it could never be considered that the cost would be absorbed. (Exh. 24) The Committee considering the assessments itself knew shippers would be asked to pay in expressing a belief the measurement did "not work an inordinate hardship on the shipper." (Exh. 27) The entire membership considered (a) "the problem of collecting funds from Volkswagen due the Mechanization Fund" at one of its meetings (Exh. 2H) and (b) a recommendation to establish "an escrow account for payments by stevedores on behalf of Volkswagenwerk". (Exh. 2C)

21. a. At the meeting of the Board of Directors of PMA and American Flag Operators, July 3, 1962, after noting that companies handling Volkswagens "had made no contribution to the Mechanization Fund" (p. 5), a motion to approve a recommendation of the "Coast Steering Committee" was unanimously carried to modify a previous action so as "to provide that PMA counsel assist Marine Terminals (and other stevedoring companies handling Volkswagens) only if the action by or against Marine Terminals raises issues which jeopardizes the Mechanization Plan or other interests of the industry. . .". (p. 6) (Exh. 2-F)

b. The previous action was taken at the meeting of the Board of Directors, December 13, 1961, wherein "it was agreed that PMA will give such support and will participate in any legal action taken and that the matter will be turned over to PMA Legal Counsel". The support and action referred to [27] "the problem of collecting funds from Volkswagen due the Mechanization Fund" and a

(Report of Commission 27-28)

694a

Report of the Commission

request by respondents "that they be authorized to bring suit against Volkswagen for the monies due". (Exh. 2-H, p. 4)

22. The facilities used by VW were initiated by means of a "Stevedoring Order" which described the contents of the arriving ship and the work to be paid for. (Exh. 36)

23. Respondents were required to prepare a "tonnage declaration form" (Reports of Tonnages) and to send it, together with "a check for contributions to be in the Association's hands *not later than the 20th of the month following the month in which such cargoes are handled.*" (Exh. 35, item 7) The foregoing was dated January 17, 1961. A further instruction to members, including Respondents, over the signature of the Vice President & Treasurer of PMA on March 16, 1961, stated: "We again wish to reiterate the fact that this contribution is a contractual commitment, exactly the same as welfare, pension and vacation contributions, and should be paid into the Association not later than the 20th of the month following the month in which such tonnages were handled". (Exh. 55, p. 2)

24. Respondents, acting by their Vice President, discussed the problem of the assessment on automobiles with other companies who handle them on the Pacific Coast, and none thought it was possible for members to absorb the assessment. (Tr., 239) The matter was also discussed at PMA meetings. (Tr., 240) It was the uniform opinion of the contracting stevedores with whom the Vice President talked that the assessment could not [28] be absorbed by members when on a measurement basis. (Tr., 241) No agreement was reached as a result of the discussions as to how assessments would be collected, it was stated (Tr., 247), but as a result everyone subject thereto did the same thing by using the same measurement, but not paying the result.

(Report of Commission 28-29)

695a

Report of the Commission

ing assessments on Volkswagens brought in under contract carriage. (Tr., 209-270) After VW refused to pay the amount of billings representing the assessment on a measurement basis, the Respondents and members of PMA refused to pay their assessments, and so did Waterman Corporation of California, agents for Walleniusrederierna. (Exh. 9) Respondents stated they "are merely following out the instructions of the Board of Directors of the Pacific Maritime Association and therefore are considered only a collection agency in this matter" and asked for instructions as to "what stand we can take in demanding payment of this assessment." (Exh. 9) Associated-Banning Co. had asked PMA officials for instructions on how to handle refusals to pay assessment charges (Exh. 11) after Waterman Corporation of California, agents for Wallenius Line, stated they would pay only on a unit basis as manifested in 1959 (Exh. 12), not on a measurement basis. Respondents discussed assessments with an official of PMA. In a letter to the official, Respondents' Vice President noted the official "was aware of what was behind" Respondents "not making certain payments into the plan, but nevertheless, you had to protect yourself by writing the letters referred to above". (Exh. 13) The "letters" were demands for payment of assessments.

[29] 25. Automobiles are assessed by a measurement ton measure rather than by a unit or weight measure. Comparative measures are as follows:

	Weight	Measurement
Sedans	1,643 lbs = .8 wt. ton	7.8 cubic tons
VW Transporters	2,193 lbs = 1.1 wt. ton	11.4 cubic tons* (Tr., 281-282)

Other figures show:

Sedans	1,609 lbs = .8 wt. ton	8.3 cubic tons
VW Average (tons approximate)	2,028 lbs = 1.0 wt. ton	10.0 cubic tons (Exh. 7)

Report of the Commission

(*Note: Exh. 7 shows for Transporters 2447 lbs and 11.8 tons and different average.) Roughly, the average assessment on Volkswagen vehicles would be about 10 times as high as on a measurement tonnage basis than on a weight ton basis. The measure applicable to Complainant's property was estimated to be at a level from 10 to 15 times higher than the measure for assessing other general cargo. (Exh. 7, p. 2, par. 6)

26. The assessment applicable to automobiles was stated to increase the cost of handling by from 33½% (Exh. 25) to 35% (Exh. 9). Another estimate was that the increase caused by the new measure was about 22% in the case of sedans and 31% in the case of transporters. (Exh. 26) Another estimate was "more than 26% in discharge costs" of Volkswagens. (Exh. 7) These estimates were not refuted. In contrast, the estimated average increase in the "discharging costs" or "cargo handling expenses" of packaged general cargo resulting from the assessment [30] was 2.2%. (Exh. 7 and Exh. 26, p. 2) The measurement ton measure causes a \$2.76 per vehicle charge in comparison with a 28¢ per vehicle charge on a weight ton measure. The longshore cost is \$10.45 per unit. Lumber is assessed on a unit measure based on 1,000 board feet per unit at the rate of 2½¢ per manifested ton. (Exh. 26, p. 2) Unboxed automobiles are normally handled for charging purposes between factory and distribution on a unit basis. (Exh. 26, p. 2)

27. The man-hours necessarily employed in handling Complainant's property, unboxed automobiles, always have been less than practically any other commodity. (Exh. 26) The mechanized handling of packaged general cargo may effect savings, but because of past improved handling methods no new practical application of mechanization to the discharge of unboxed automobiles is visualized.

(Report of Commission 30-31)

697a

Report of the Commission

(Exh. 7) Automobiles will benefit less from mechanization than other cargo. The average direct labor cost, without fringe benefits, of discharging Volkswagen vehicles was 49¢ per measurement ton as compared with the 27½¢ measurement ton assessment. The assessment is 56% of the average direct labor cost. (Tr., 284) In 1962, 28½¢ was the assessment, or 58% of the average. The total direct longshoremen's labor cost of all PMA members in 1962 was \$103,953,362, and total fund assessments were about \$5,200,000 (Tr., 285, Exh. 49), or an assessment of 5.8 of the total direct labor cost ("wages"). (Tr., 284)

28. For Volkswagen vehicles transported in chartered ships, the manifests and bills of lading show the number of automobiles [31] and the weight in kilos. No specific rate or total freight is shown being noted by the endorsement "freight prepaid" or "freight as agreed". Contracts for freight are based on a rate per automobile unit. For the same reason, unloading charges are customarily on a unit basis. (Exh. 7)

The intercoastal freight rate structure is on a weight basis, i.e., not measurement, and the reporting and levying of a tonnage assessment for automobiles is on a unit of 2,000 lbs. (Id., and Tr., 222-223, 288-290, 313) The California State wharfage on unboxed automobiles is based on a weight ton of 2,000 lbs. (Id.) Volkswagen vehicles are manifested for purposes of common carrier (liner) shipments on a unit basis of measure. (Id., and Exh. 12) Many automobile manifests show weight, but some show measurements also. (Tr., 323-324)

29. Any property other than automobiles would be measured for assessment charges on a manifest basis even where the per ton charge is less. (Exhs. 7, 44)

Report of the Commission

FINDINGS

1. Complainant VW is a shipper of property consisting of automobiles on common carriers by water in foreign commerce and on private carriers through exportation from the Federal Republic of Germany (Germany) and importation into the United States, and obtains and uses the facilities of Respondents.
2. Respondents are persons carrying on the business of furnishing warehouse or other terminal facilities in connection with a common carrier by water and each is an "other person subject to this act" as defined in the first section of the Act.
- [32] 3. Respondents have entered into an agreement with other common carriers by water and with other persons who are carrying on the business of furnishing wharfage and terminal facilities in connection with common carriers by water that they will regulate transportation rates and control and regulate competition among each other by establishing uniform charges which Complainant and others must pay for unloading and storage services, as a part of wharfage and terminal facilities, measured by the tonnages of property handled.
4. Respondents have provided for a cooperative working arrangement by agreeing to assess themselves in accordance with PMA directives and to pay assessments into the Mechanization and Modernization Fund. Assessments and payments are collected by charges for facilities supplied to Complainants.
5. Neither a true copy of any agreement regulating transportation rates and controlling and regulating competition, nor any memorandum of the cooperative working arrangement has been filed with the Commission.

(Report of Commission 32-33)

699a

Report of the Commission

6. Respondents, in conjunction with other persons, members of PMA, by measuring the assessment of the amounts they are obligated to pay into the Mechanization and Modernization Fund, using a measurement ton regardless of how manifested for automobiles, but a revenue ton (i.e., whatever type of tonnage used to compute freight charges) as manifested for other cargo, and by adopting special rules for certain other property, indirectly subject the property automobiles and the particular person Complainant VW to undue and unreasonable prejudice and disadvantage.

[33] 7. Respondents' regulations and practices relating to and connected with receiving, handling, and delivering property consisting of automobiles are unjust and unreasonable insofar as such property is required to be measured differently, for the purpose of Mechanization and Modernization Fund assessments, from other property, with the result that such property bears a disproportionately high share of the cost of unloading when the assessment costs are included as part of Respondents' charges for facilities and services furnished to Complainant.

DISCUSSION

Introduction:

Respondents' Answer does not deny the status of Complainants as exporters of automobiles from Germany and as importers thereof into the United States, nor that Respondents are engaged in foreign commerce. (Answer, par. II) Respondents admit that they are in the business of furnishing terminal services in connection with common carriers by water, but deny that terminal services were furnished Complainant in connection with a common carrier by water or that the Commission has jurisdiction over them as terminal operators. (Answer, par. III) Re-

Report of the Commission

spondents admit they have included as part of their charges for services the amounts of assessments under the Supplemental Agreement on Mechanization and Modernization. (Answer, par. IV) Respondents deny anything they have done violates any provisions of the Act (Answer, pars. V, VI, VII, and VIII), but admit the statements regarding the action in Admiralty before a United States District Court and deny the Commission's jurisdiction with [34] respect to the matters alleged (Answer, pars. IX and X). The facts admitted will be accepted without further discussion, particularly the fact that Respondents have passed on to Complainant in their charges and billings the agreed-upon assessments which produce the money for the Mechanization and Improvement Fund. Wherever services are rendered, it is considered that such services are part of the total facilities furnished by Respondents. (See cases cited below) Herein the term facilities includes services.

Respondents' three major denials are:

First, they are not persons subject to the Act, at least with respect to the activities involved.

Second, no unfiled or unapproved agreements of the type described in Sec. 15 are involved.

Third, they have not violated any other provisions of law in Secs. 16 or 17 of the Act.

Reasoning in Support of Findings:

Sec. 22 of the Act creates a right in "any person" to file a complaint setting forth a violation of the Act "by a common carrier or other person subject to this Act."

The facts in items 4, 5, and 9 through 19 establish that PMA members are both common carriers by water and other persons and that their activities which are the subject of this proceeding have all been taken after following

(Report of Commission 34-36)

701a

Report of the Commission

correctly the procedures of their agreements of association and have all been duly authorized and carried out pursuant to such authorizations. There is no question herein as to unauthorized acts or agreements, [35] nor that Respondents are not fully aware of, and responsible for, each action.

1. Persons subject to the Act.

There is no denial of Complainant's status as "any person", referred to in Sec. 22, but Respondents deny they are an "other person" under the first section of the Act because their activities are limited to the stevedoring of chartered ships; neither wharfage, warehouse, or terminal facilities, nor facilities in connection with a common carrier by water are the subject of the proceeding; and, therefore, the law does not apply to them.

The denial is not supported. The facilities furnished to the Complainant and furnished to the public are far more comprehensive than stevedoring services. Stevedoring is combined with the furnishing of all kinds of terminal facilities. The services range from the opening of hatches to towing cars to storage areas and require the furnishing of many kinds of equipment such as towing tractors and other gear. The fact that VW's order is titled "Stevedoring Order" does not control what happens after the order is issued. Complainant's order to Respondents explicitly refers to charges covering the supply of discharging gear, 10 days' free storage, public liability and property insurance, and wharfage on cars. As part of its non-stevedoring facilities, Respondents furnished motor-driven tractors and bridling devices and guard service, lighting, and cleaning for their storage spaces. Respondents may also be considered as furnishing warehouse facilities to the extent [36] they furnished a parking lot pending collection of the cars by dealers even though there was no roof over, and walls surrounding, the cars as would be the case with a traditional warehouse.

Report of the Commission

A PMA official testified that longshoremen employed in terminal operations were to benefit equally with those involved in stevedoring work (Tr., 106-107, Exh. 5A, p. 7), thus admitting more extensive operations. The Commission's predecessors have held that persons furnishing hand trucks, flat top trucks, lift trucks, switch engines, and the labor required to operate such equipment are "other persons and the furnishing of stevedoring and terminal services constitutes a "facility". *Status of Carloaders and Unloaders*, 2 USMC 761 (1946) and *Carloading at Southern California Ports (Agreement No. 7576)*, 2 USMC 784 (1946). Where stevedoring has been combined with furnishing terminal facilities, the Commission has assumed jurisdiction and been sustained. *Greater Baton Rouge Port Comm'n v. United States*, 287 F. 2d 86 (5th Cir. 1961) *Cert. denied*, 368 U. S. 985 (1962).

Respondents concededly furnished terminal facilities in connection with other common carriers by water and about 90% of their business is done for common carriers. Of this business Respondents furnished Complainants the use of their facilities in connection with the common carriage of some of the 9,363 vehicles in 1961 and 13,672 vehicles in 1962, shipped through Pacific ports, and made its facilities available at all times to importers, regardless of how the vehicles were shipped.

[37] In *California v. United States*, 320 U. S. 577 (1944), the Supreme Court sustained jurisdiction over terminal operators in their relations to all carriers and shippers, stating (at 586):

"And whatever may be the limitations implied by the phrase 'in connection with a common carrier by water' which modifies the jurisdiction over those furnishing 'wharfage, dock, warehouse, and other terminal facilities,' there can be no doubt that wharf storage facilities provided at shipside for cargo

(Report of Commission 37-38)

703a

Report of the Commission

which has been unloaded from water carriers are subject to regulation by the Commission. * * *

Jurisdiction depends on status. Respondents' status is that of an "other person" subject to the Act within the meaning of the first section, because their status is fixed once the connection with a common carrier is shown and does not shift to divest from time to time, depending on whether or not the warehouse or terminal facilities are furnished for a common carrier. Respondents' acts in connection with common carriers—not conformity with other sections of the Act besides the first—fix their status or classification.

Findings 1 and 2 are supported.

2. Unfiled Agreements.

The record shows, first, there was an agreement that the collection of assessments for the Mechanization and Modernization Fund were to be made from users of members' services; and, second, the subject matter of such agreements is covered by Sec. 15 of the Act.

First, each Respondent as an "other person subject to this act" and the members of PMA, consisting of common carriers by water and other persons furnishing terminal facilities, [38] adopted motions, resolutions, and other actions prescribing their future conduct, and performed acts in accordance therewith. The Modernization Agreement to which respondents as members of PMA are a party expressly provides for collection of assessments under "arrangements adopted" pursuant to the PMA by-laws. (Fact No. 7) Agreements under Sec. 15 include "other arrangements", and this is one of them. Respondents were present at meetings and voted on the necessary resolutions to implement the Modernization Agreement. By these actions, Respondents became parties to an agree-

(Report of Commission 38-39)

704a

Report of the Commission

ment and conformed in whole and in part with such agreements. Respondents understood and acceded to the directives of the Board of Directors and of the PMA officers, guided by approved committee reports, all of which were duly authorized in accordance with constitution and by-law requirements finding on Respondents. The majority committee report was adopted after "considerable discussion" and so was well understood. Sec. 15 explicitly makes the term "agreements" include "understandings". Each action involved an understanding as to what was to be done, followed up by action. The Respondents were parties to all the agreements evidenced by the minutes of meetings and written communications from the directors and officers. Part of these understandings was that collection of the assessment would be from members' customers.

The majority believes the agreement as to the manner of assessing its own membership does not fall within Sec. 15 because "standing by itself, it has no impact upon outsiders." It is hard to take this assertion seriously. In the first place [39] there is no "impact" test to determine whether an agreement falls within Sec. 15. In the second place this statement seems to say that assessments totalling \$29,000,000 have no impact upon persons who will provide this amount of money. To make the agreement to assess stand by itself apart from how and from whom it is to be collected ignores significant realities. If the agreement to assess really stood by itself, apart from any agreement to collect, and had no impact on outsiders, there would have been no need for members, including Respondents, to ask for instructions or authorizations when the outsiders refused to pay, nor for the refusal of Respondents, other terminal operators, and stevedores to refuse to pay the assessments. If the agreement to assess truly stood "by itself", each member would be honor bound to pay, no

Report of the Commission

matter what happened. The claimed lack of agreement about collections is contradicted by the fact that everyone behaved as though all understood the assessment would be collected from outsiders such as Complainant and failed to pay after seeking instructions when VW refused to pay. The correspondence shows a general understanding that PMA members were only collection agents, and when shippers ("outsiders") refused to pay, the members need not pay. Their own concept as agents implies agreement and precludes adverse interest. The collection method was communicated to PMA officials and was discussed at meetings, attended by most of the members, in terms which conveyed an understanding that all had arrangements to have the amounts needed collected from users of members' services. The exact method each would follow [40] to collect the money may not have been discussed, but it was understood that all would use the same measure and obtain the product of its use from customers. The evidence showed other terminal operators had done the same thing after discussion on the subject. The fact that some may not have segregated their charges the same as Respondents or stated them separately on a piece of paper does not negative the evidence and eliminate the fact of agreement to include the charges. Anyone who has expenses relating to the assessment would normally reflect his expenses by charges creating someone else's costs without agreement, but it might not be done after deciding on the same measure as here, nor after consultation, nor in accordance with instructions as to what to do if it didn't work, nor in agreement as to how to conduct litigation if this became necessary. Recognition of the understanding was shown in the letter referring to the "need to protect yourself by writing" letters asking for payment of overdue assessments. The letter preserved the appearance of rights, rather than made serious demands. The protection only concerned the

Report of the Commission

need to dissemble the fact that the customers of respondents were being billed for the assessments in one form or another and payment of assessments by respondents would not be made unless the customers paid. One of the officers of PMA stated the intent of all members that the obligations to pay were a "contractual commitment", but it was clear actual payment depended on collections. There was only one practical way the commitment could be implemented, and this was well understood to be through payments by customers of respondents.

[41] Supplementing the evidence of an agreement to regulate rates and competition are the actions taken to select counsel to enforce collection of assessments. At a meeting on May 14, 1962, it was "agreed that PMA will give such support and will participate in any legal action taken and that the matter will be turned over to PMA Legal Counsel". The agreement was in response to a request by respondents that PMA give support "on the Volkswagen suit". The suit was referred to in "a communication from the Funding Committee covering the problem of collecting funds from Volkswagen due the Mechanization Fund". The funds were not considered to be due from Marine Terminals. This shows clearly the understanding of everyone that VW and other shippers, not the members, were to pay the money "due the Mechanization Fund" and members were collecting agents. Inability to collect from "outsiders" rather than from members was understood to be a shared "problem".

Later there must have been belated recognition of the perils of this action, because it involved PMA counsel in representing both the creditor PMA and the defaulting debtor member such as respondent Marine Terminals who refused to pay his "contract commitment" assessment. The appearance that the assessment was due from members was all that had to be preserved, not the real claim. There-

(Report of Commission 41-43)

707a

Report of the Commission

after, it was provided "that PMA counsel assist Marine Terminals Corporation (and other stevedoring companies handling Volkswagens) only if any action against Marine Terminals raises issues which jeopardize the Mechanization Plan or other interests of the industry. . ." [42] PMA reserved the right to institute action against members still in default, by shifting to a limitation on actions.

It is not apparent how the shift takes the curse off the embarrassment involved in representing adverse interests because jeopardizing issues could arise in a debt action. The evidence underlines the point that respondents and PMA understood they were working together in a non-adversary arrangement to collect money due from "outsiders" rather than from members. Normally, even jeopardy to the Mechanization Plan would not justify such an understanding where some one has failed to meet a "contract commitment". It took a special understanding to alter normal conduct. Their initial spontaneous actions point to common understandings and arrangements to work together in effecting collections from shippers in spite of a conflicting debtor-creditor relation between PMA and its members, and only their afterthoughts point to an understanding that the adversity must be preserved, but only where the Plan was not jeopardized. Both actions were preceded by agreement in any event. After agreement there was modified conduct in recognition of the adverse interests and separate counsel were retained when the admiralty action was initiated when all other action had failed to make the outsider VW rather than the members pay up without question.

Sec. 15 is explicit that the "term 'agreement' in this section includes understandings, conferences and other arrangements."

[43] Respondents concede in their answer that they "admit that they have included as part of their charges

Report of the Commission

for services the amounts of the assessments . . ." and the evidence supports the finding that they did so as the result of a common understanding, agreement, or working arrangement.

The majority disposes of this evidence by stating the record is devoid of evidence showing an additional agreement. Perhaps a court will decide the evidence is not adequate to prove the complaint contrary to my position, but absence of evidence will not be the reason for rejecting the complaint. The Administrative Procedure Act in Sec. 8(b) directs us to provide a statement of the reasons or basis for our conclusions. The directive is not satisfied by such a succinct disposal of all this evidence. The reasons or bases are thought to be supplied by stevedores' opinions and explicit statements to the contrary. In my opinion, this evidence is overcome by other statements and deeds showing agreement to pass on the assessments, but, whatever the outcome may eventually be, the majority should not pretend the other evidence does not exist and accept such self-serving statements without also substantiating the statement and overcoming the evidence which complainants presented with reasons showing non-contradictory effect. The characterization of the majority position as "more logical and less contrived" does not supply the deficiency of reasons or basis for the "devoid of evidence" ruling.

Second, the subject matter of the agreements is related to the subjects of Sec. 15. Sec. 15 requires that the subject [44] of agreement be related to "fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations or special privileges or advantages; controlling, regulating, preventing, or destroying competition . . . or in any way or in any manner providing for an exclusive, preferential or cooperative working arrangement." The subject matter of the agreements was (a) the measurement of the property using the terminal facilities,

(Report of Commission 44-45)

709a

Report of the Commission

in accordance with the agreed guiding regulations, and (b) the method of collection of the charges calculated after making the measurement. Both regulated or controlled rates and competition.

The effect of the measurement tonnage measure and assessment was to create a new cost element in addition to pre-existing rates for terminal facilities. Respondents had to increase their charges to their customers to recover the new costs and thereby the total transportation cost of moving automobiles was increased. The measurement ton assessment on automobiles became a part of the Respondents' rate structure. The facts showed further that all operators got together and decided they could not absorb but would pass on the assessment applicable to automobiles, and PMA's members themselves agreed to impose the charge. Respondents' lawyers were under no illusion about everyone's understanding or contemplation when they wrote with reference to the Supplemental Agreement between PMA and ILWU effective January 1, 1961:

“It was contemplated that these assessments, as added stevedoring or terminal costs, could be added to the charges of the stevedore or terminal companies.”

[45] The agreement on the conduct of litigation shows how important the method of collection was on rates. If it is understood respondents need not pay assessments unless they or PMA can collect separately, rates will be regulated at a lower level than if assessments are a cost of business which Respondents must pay as a debt whether collected or not. Accordingly, these agreements regulate rates, depending on which course of action is followed. Granted there was plenty of ambiguity in the method of collection to be followed as shown by the shifting positions taken, but the fact of change itself shows a prior understanding

(Report of Commission 45-46)

710a

Report of the Commission

that rates were to be regulated after each change. The high level of charges from the automobile measure and the large number of automobiles imported caused large sums of money to be involved. This situation created extreme pressures to prevent the "contract commitment" advice from being taken too seriously and to devise methods of collection which would not disrupt members' rates which would occur if the assessment were truly a debt of the members. The alteration of normal conduct and temporary confusion as to the niceties of selecting counsel disclosed an understanding of how Respondents' rates would be affected, depending on whether Respondents were debtors or PMA agents for collecting the assessment. In the former case the credit of PMA members and PMA power over them protected the Fund; in the latter, only the credit of a much larger number of shippers.

The increase in charges constitutes a regulation of transportation rates, and the combined activity of Respondents [46] and other terminal contractors and stevedores in agreeing to not absorb the assessment, as well as their activities as members of PMA, constitutes a control and regulation of competition.

Confirmation of the control of competition is supplied by generalized business considerations. If a group of competitors agree to share a cost element such as the rental of a pier and terminal area and then allocate the rent after a collectively made decision to named customers or specified types of property, instead of allowing actual use to govern the allocation, they thereby distort the normal forces of the market by their agreement to allocate, which is the equivalent of control.

The fact that the increased charges may have applied only to non-common carriage is not material, because the common carrier test applies to fixing the status of persons defined in the first section of the Act and does not exclude

(Report of Commission 46-47)

711a

Report of the Commission

activities and property from the law's protection. The fact that the combined activities resulted in an understanding to collect by passing on assessments in the form of higher transportation charges and to make them apply to property transported in non-common carrier service does not absolve the actor once he is classified as an "other person". Validating absolution would make identical activity in relation to identical property have different consequences under the law, depending on the status of the ship carrying the property before it reaches the Respondent. Under the first section, the status of Respondent is fixed [47] by his acts before the ship reaches the terminal facilities. Legal conclusions involving Secs. 15 or 16 must be based on status ascertained before the actions complained of, not on common carrier vs. non-common carrier refinements ascertained afterwards.

The majority seeks to avoid the consequences of reasoning by referring to the "literal language of section 15" relative to a "cooperative working arrangement" and stating the terms of Sec. 15 were qualified by Congress by means of legislative history "to apply only to those arrangements" which affect "competition". The terms are also thought to be qualified by associating them with agreements to pool secretarial workers or to share office space and agreements which affect only labor-management relations. The latter was interpreted by a court not to be covered by a provision of the Interstate Commerce Act relating to combinations and consolidations of land carriers.

Sec. 15 is sufficiently explicit and need not be compared with unrelated laws or interpreted to limit the subject to cooperative working arrangements and "competition" in disregard of other provisions in Sec. 15. My decision is also based on the other terms and on the understandings and arrangements, cooperative or otherwise, relative thereto. Far from finding the record "devoid of evidence showing the existence of such an additional agreement" to pass on assessment expenses, I find the record amply supplied with

(Report of Commission 47-49)

712a

Report of the Commission

evidence on such an agreement and its relation to the subjects referred to in the first paragraph of Sec. 15.

[48] Finding No. 3 is supported.

The acts of Respondents and others following their agreements to assess themselves in response to the adoption of the PMA resolutions and motions and the issue of PMA directives consisting of using the measurement tonnage measure on automobiles and collecting the amounts found to be due by passing on the necessary expenses equally constitute a cooperative working arrangement. Respondents and other PMA members all worked together in doing the same thing pursuant to their prior arrangements. Contributions are referred to in the By-Laws as being required under "arrangements" of PMA. Everyone "contemplated" doing the same thing. The same reasoning applies here to support the finding as was applied to the preceding part of Sec. 15.

Additionally, when VW refused to pay on billings including the assessment, the Respondents and other PMA members affected thereby refused to pay assessments. Wallenius Line, a common carrier but not shown as a member, also refused to pay. (Tr., 324) This action constitutes evidence of an understanding and a cooperative working arrangement (a) to charge persons such as Complainants for the amount of assessments and (b) to relate the payment of the assessment directly to the Respondents' ability to collect the charge pursuant to the arrangement. If the amount could not be collected, the assessment would not be paid.

Under almost identical "cooperative working arrangement" language of Sec. 412 of the Federal Aviation Act, 1958 (49 [49] U. S. C. § 1382), the Civil Aeronautics Board held that the establishment of an employer collective bargaining association of carriers was a cooperative working arrangement which had to be filed. *Airlines Negotiating Conference Agreements*, 8 CAB 354 (1947).

Finding No. 4 is supported.

(Report of Commission 49-50)

713a

Report of the Commission

The obligation to file has been established above. The records of this office confirm that none of the agreements found herein to exist have been filed. A finding that the agreements and memorandums of arrangements have not been filed is thus supported without the need for further proof.

Finding No. 5 is supported.

3. Other provisions of law have been violated.

Sec. 16 of the Act makes it unlawful for any other person subject to the Act either alone or in conjunction with any other person, either directly or indirectly, to give any preference or advantage to any description of traffic in any respect whatsoever or to subject any description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. A violation of Sec. 16 is complained of.

Two facts stand out in relation to preference, prejudice, or disadvantage:

First, the charges by Respondents to meet PMA assessments where automobiles are handled were measured by the measurement ton, regardless of how manifested, and no other property was measured by such a rule. Other property was measured according to the way it had been manifested in 1959. The use of the [50] measurement ton measure required a change from both earlier methods and from current practices in regard to automobiles, in comparison with measure of all other property for assessments as freighted or manifested. The measure depended on how freight charges were determined, except for automobiles. The Vice President, before February 21, 1961, when the "measurement" measure for automobile assessments officially went into effect, had claimed such a measure

Report of the Commission

rather than a tonnage measure had applied all along, at least since January 1958, but his claims never were adopted officially by PMA. All we have before February 21, 1961, is his personal assertion of what PMA should be doing rather than what PMA actually did. Somewhat inconsistently with the claim, letters regarding declaration forms refer only to "tonnages" in January and March 1961.

Second, the effect of the change in measurement and the different treatment was to make the traffic described as automobiles bear a substantially higher assessment charge: (a) about 10 times higher than if measured on a weight basis as shown in many manifests and as other cargo is measured, (b) from 22% to 35% higher in terms of unloading costs than other traffic described as packaged general cargo which bore a 2.2% increase as a result of the assessments, and (c) about 10 to 15 times higher than other general cargo.

Where exceptions were made for other descriptions of traffic, the charges were always lower: (a) lumber was measured on a unit basis for assessment charges, but automobiles were not, even though manifested in some cases on a unit basis and [51] there was a normal method of measuring other handling costs on a unit basis, and (b) Army property and coastwise cargoes received concessions.

All the concessions applied to property in domestic transportation, but the increased charges applied to automobiles imported from foreign countries.

Unboxed automobiles were shown generally to require less man-hours handling per unit than practically any other commodity, yet automobiles still paid more.

There is no explanation in the record to show why the different measurement method was applied to Complainant's property. The method was shown to deviate from measurement practices on the coast for other purposes.

The result of the measurement ton measure is that, in the words of at least two stevedoring companies, it is "not

(Report of Commission 51-52)

715a

Report of the Commission

based on practical considerations and has no comparison to other commodity assessments." (Exhs. 24 and 25) Still another stevedore referred to the measure as "discriminatory and is contradictory to over-all basis of assessing weights or measurement as freighted", i.e., as manifested. (Exh. 23) Other evidence showed that ever since Volks-wagens were first shipped to the Pacific Coast in 1954, "they have been freighted on a unit basis, or on lumpsum FIO or time charter" and not only freight but terminal facilities have always been computed and paid at so much per unit. (Exh. 26) Another stevedore referred to statements that "establish the inequity of the effect of the present assessment to these vehicles on a measurement [52] ton basis . . . disregarding entirely the basis on which these vehicles are freighted, as well as the basis on which all stevedores on the Pacific Coast handle their contracts". (Exh. 16) In other words, established trade measurement practices have been disregarded in this one instance for no apparent reason and followed in the case of all other property. This action creates an unreasonable prejudice.

The result of the shift to measurement tons for automobiles made the increase applicable to property where "the man-hours necessarily employed in their handling always have been less than practically any other commodity". This was said to accentuate the percentage disparity in the cost increase. Others refer to the "undue burden on this one commodity". (e.g., Exh. 18) Such effect creates an unreasonable disadvantage.

There was not in 1959 nor at this time any uniform practice in manifesting automobiles any more than there was in 1959 with respect to other property, except that in the coastal trade automobiles are manifested and freighted on a weight basis and common carrier shipments of Volks-wagens were and are most frequently manifested and freighted on a unit basis, although weights and measures may be shown. The treatment of automobiles cannot be

(Report of Commission 52-53)

716a

Report of the Commission

justified on the basis of any uniform traditional trade practice of using a measurement ton measure. This action creates a preference for other property and a prejudice to automobiles.

Because of the difference in the method used to measure Complainant's property, both in relation to other services for [53] automobiles and to other descriptions of traffic, and the resulting high increase in the economic effect caused by the departure from the usual measures, it is concluded that there has been preference and advantage to traffic other than Complainant's property and disadvantage and prejudice to Complainant's property. The actions have been indirect because the method used was to adopt the measure enforced by PMA in cooperative arrangement with other members.

Precedents of this agency have added to Sec. 16 the requirement of a showing that competitors have been meted out different treatment before undue prejudice in violation of Sec. 16 may be proven, *Afghan-American Trading Co. v. Isbrandtsen Co.*, 3 FMB 622 (1951) and *Huber Mfg. Co. v. N. V. Stoomvaart Maatschappij "Nederland" et al.*, 4 FMB 343 (1953), but others have held Sec. 16 was violated without any proof of disadvantage among competitors, *Absorption or Equalization on Explosives*, 6 FMB 138 (1960), *Swift & Co. et al. v. Gulf and South Atl. Havana Conf.*, 6 FMB 215 (1961), affirmed: *Swift & Company v. Federal Maritime Commission*, 306 F. 2d 277 (U.S.C.A., D.C. 1962). In *New York Foreign Frgt. F. & B. v. Federal Maritime Com'n*, 337 F. 2d 289 (USCA 2d 1964) at p. 299 the Court held that the charge ". . . of widely varying amounts, for no apparent reason, suffices to establish discrimination in violation of Section 16 (First)." The Court was referring to charging shippers disguised markups and was validating a rule which prevented a practice that was alleged to violate Sec. 16 unless prevented by rule. The Court distinguished the cases involving "transpor-

Report of the Commission

tation [54] or wharfage charges . . . dependent on the particular commodity involved . . ." where the fees for shipping bananas would bear no relation to the fees levied for heavy industrial equipment, and where proof of a violation would require a showing of competitive relationship. The Court continued by stating the fact that the widely varying amounts covered substantially identical services and ". . . seems to us to be *prima facie* discriminatory in a regulated industry." (Id.) This statement means the action itself violates the law without proof of a competitive relation to anyone else. The present facts do not concern a comparison of services and related versus unrelated charges for the services, but concern a cost of doing business in the form of an assessment which is like a tax. Nevertheless, a requirement of a competitive relationship is excludable as a prerequisite to proof of a violation because the measure of respondents' charges is equally unrelated by apparent reason to what the charge is for, just as widely varying charges are unrelated to services that are substantially the same. The statements of the Court about the sufficiency of variations unsupported by reasons and lack of need for competition as proof to establish violation of Sec. 16 (First) are thus pertinent and applicable. A finding of undue prejudice or disadvantage under Sec. 16 should not be made to depend on competition, but may exist in relation to other kinds of property where it is shown they should be treated alike, absent contrary reasons. The existence of competitive shippers may affect the amount of reparation due, but not liability under Sec. 16.

[55] Finding No. 6 is supported.

Sec. 17 of the Act requires every other person to observe just and reasonable regulations and practices relating to the receiving, handling, storing and delivering of property. Sec. 17 singles out certain acts of discrimination against property and authorizes the Commission to prescribe just and reasonable practices. Sec. 17 concerns practices in

Report of the Commission

connection with property, no matter how it is transported, whether by common carrier or otherwise.

Respondents have established, observed, and enforced, relative to the receiving, handling, storing, or delivering of property, in the discharge of obligations as a PMA member, the following regulations and practices:

- a. adoption of a method of measuring such property to obtain money to meet payments to the Fund;
- b. acceptance of the obligation to make, and making, monthly payments to PMA in accordance with the agreed measure; and,
- c. inclusion in their charges for terminal facilities of the amount due by application of the agreed measure.

It has been held that practices which result in the assessment of charges against persons not directly benefited by services rendered are an unjust and unreasonable practice within the meaning of Sec. 17. *Terminal Rate Structure—Pacific Northwest Ports*, 5 FMB 53 at 55 (1956). In that proceeding only book entries were involved. A cost allocation accomplished by actual charges against persons not directly benefited, as [56] where automobiles have lower handling charges than other cargo and receive less benefit than other general cargo on the average from the arrangement with ILWU, is equally if not more a "practice" than book entries. Our predecessor stated in the *Terminal Rate Structure* case (*supra*) at p. 56, "the terminals may not recover, through a service charge, deficiencies in revenue attributable to a totally different operation". Respondents have followed PMA directives by imposing charges resulting from the automobile measure to make up for deficiencies in assessments and contributions to the Fund resulting from lower assessments on coastwise trade, lumber, certain Army property, and to some extent the lower assessment

(Report of Commission 56-57)

719a

Report of the Commission

on all other property. Complainant's property is made responsible for bearing 10 times higher charges than other property and 20 times higher than that in the coastwise trade. The difference in treatment between Complainant and all others resulting in this expensive result is also an unjust regulation.

The Respondents' practice may not be looked at only in relation to one item of property, i.e., automobiles, but must be viewed as part of the complex of practices of which it is a part and comparisons and evaluations made as to the reasonableness of the entire system of cost measurement and allocation. The majority avoids this task of passing on reasonableness of the measure on the ground that (a) "there is no statutory requirement" of equality and (b) "it was necessary in the business judgment of respondents." Neither is there any statutory requirement of inequality and *Evans Cooperage Co.*, [57] Inc. v. Board of Commissioners, 6 FMC 415 (1961), does not hold that charges may be differentiated without reason so as to burden one person or class of property 10 times more than others where "the record contains no basis upon which a reasonable allocation of costs could be made". In the *Evans* case, on the contrary, the charge to complainant was exactly the same as to everyone else, and it was only found the benefits, while somewhat different, could not be measured precisely. The facts were that the ship charged dockage did not tie up to the dock, but to the seaward side of a ship already tied up. The "business judgment" argument only means the measure is reasonable because Respondents say so. This is an excuse, not a reason.

Finally, the fact that the decision was a business judgment unrestrained by normal forces of supply and demand introduces potential unjustness in the regulation by its unrestrained character. Here business judgment is not being exercised subject to competitive market restraints of other suppliers, but is being exercised by substantially all sup-

Report of the Commission

pliers to regulate the market itself. Judgment is restrained by the vote of PMA members who are virtually the entire market for the handling of property passing through Pacific Coast ports. The articles of association obligate obedience to the voted decision. There is no other practical restraint, particularly in view of evidence that ILWU was putting pressure on non-PMA members to contribute the same as members. Normally the function of regulating the market itself when needed in the public interest is reserved to government, [58] rather than to a private association or to the association aided by the dominant labor union association.

If the assessment charges varied in response to competitive forces within the market, a business judgment decision might not be unjust because of the protective restraint afforded by the open market. Where the market protection is missing, however, there is no assurance of justness, and it is the function of government to provide the assurance. The facts of this case provide a perfect example of what happens when there is a single decision rather than an interplay of conflicting decision by many entrepreneurs. The tenfold charge would probably be impossible under competitive conditions. PMA was able to single out various subjects of commerce and, aided by labor unions, to make property subject to assessment to meet labor costs in the same way that the government measures property for tax purposes to meet costs of government. There was no practical restraint on its choice. The unrestrained choice of a measure unrelated to labor costs needs justification to begin with, but is made unjust by the unequal application made possible by Respondents' participation in the PMA control over the market.

The majority refers to the reasonableness of Respondents' activities attested by (1) efforts to change the Mechanization Fund assessments, (2) offers to pass on only part of the assessments, and (3) measurement levies on dues for

(Report of Commission 58-60)

721a

Report of the Commission

several years without protest. Presumably the statement refers to the second paragraph of Sec. 17, requiring other persons subject [59] to the Act to establish "reasonable regulations and practices", and to activities equated with regulations and practices. There is no question in this dissent as to Respondents' good intentions in seeking a change in the assessment and offering to pass on only part of the assessment. What have been questioned and found wanting are the actual results of Respondents' practices in line with the agreed regulations. The facts show the assessments have not changed, nor have claims against VW for full payment actually been changed. At most the offer to pass on only part of the assessment was a bargaining concession, not a change of conduct. With regard to several years of levy without protest of the PMA dues assessment as distinguished from the Mechanization Fund assessment on a measurement basis, past failure to challenge the practice relative to dues may not be translated into present and future reasonableness of the disparate practices relative to the Mechanization Fund. The past in this case must relate to before November 1961, because around that time VW representatives made known their objections to what was being done to them in regard to the Fund Assessments. (Tr., 151-155) If Respondents make the intended changes, another issue might be presented.

Finding No. 7 is supported.

4. *Observations.* The many complex considerations in this proceeding ultimately funnel themselves down to the single error of PMA in choosing property rather than labor (in terms of man-hours with adjustments to meet disclosed [60] inequities) as a measure. PMA chose the wrong measure for its members' obligation to compensate the working man for displacement from mechanization improvements creating fewer opportunities for work. Praise-

(Report of Commission 60-61)

722a

Report of the Commission

worthy as these endeavors are, PMA lost sight of the basic consideration that Secs. 16 and 17 of the Act are founded on a policy of protecting property in commerce and protecting its competing owners and the public against unfair competitive practices. Such policy includes protection of the public against unfair market control. Had PMA chosen to follow its minority committee report and avoided the use of the protected property to measure its charges on shippers and on commerce and used instead a labor measure, and property to a less extent, equitably applied, my conclusions about these acts would very likely be the reverse of what they are. With such a measure, any burden would be directly related to and attributable to labor costs and become a just cost of business. Different assessments would be based on genuinely different situations. No description of traffic and no particular person would be singled out as the object of disadvantage. The entrepreneurs' expenses would be related to the working man's production. The measure would be related to compensation for displaced production, would not be subject to unfair market control, and would be just, fair, reasonable, and without prejudice or disadvantage.

CONCLUSION

For the foregoing reasons the Examiner should be reversed in deciding there has been no violation of Secs. 15 or 16 and no failure to comply with Sec. 17 of the Act, and the exceptions should be sustained.

[61] **Commissioner Hearn, Dissenting**

Like the majority, I conclude that the record does not establish violations of sections 16 and 17 of the Act. Complainant's automobiles have not been disadvantaged or prejudiced to the preference or advantage of any other automobile shipper, and the assessment of complainant's

(Report of Commission 61)

723a

Report of the Commission

automobiles on a measurement rather than a unit or weight basis, has not been shown to constitute an unreasonable practice relating to the receiving, handling, storing, or delivering of property. Further, although it is asserted that automobiles shall derive only a general or common benefit from the fruition of the PMA-ILWU compacts, there need "be no precise equivalence between the services rendered and the charges." *Evans Cooperage Co. Inc. v. Board of Commissioners*, 6 FMB 415, 419 (1961).

I disagree with the majority solely on the reading of the record in the light of section 15. As a general rule, our long established national policy frowns upon concerted action by members of all segments of our business community. Ocean shipping, forwarding, and terminal operating subject to our jurisdiction have traditionally enjoyed an exemption from this rule where the concerted action is not contrary to our public interest or detrimental to our commerce,¹ and is pre-approved by the Commission. Absent the foregoing, such conduct is contrary to section 15 and is unlawful under the Shipping Act.

As exceptions to our national antitrust policy, proposed agreements must be scrutinized carefully:

The condition upon which such authority [the authority to legalize concerted action] is granted is that the agency entrusted with the duty to protect the public interest scrutinize the agreement to make sure that the conduct thus legalized does not invade the prohibitions of the anti-trust laws any more than necessary to serve the purposes of the regulatory statute. *Isbrandtsen Co. v. United States*, 211 F. 2d 51, 57 (D. C. Cir. 1954).

¹ "[T]he Shipping Act specifically provides machinery for legalizing that which would otherwise be illegal under the anti-trust laws." *Isbrandtsen Co. v. United States*, 211 F. 2d 51, 57 (D. C. Cir. 1954).

(Report of Commission 62)

724a

Report of the Commission

[62] It is in this context that the following language of section 15 is so important:²

Any agreement . . . not approved . . . by the Commission shall be unlawful, and agreements . . . shall be lawful only when and as long as approved by the Commission; before approval or after disapproval it shall be unlawful to carry out in whole or in part, . . . any such agreement. . . .

Thus, the sole issue to which I address myself is whether respondents, persons subject to the Act, entered into and carried out an agreement, understanding, or arrangement within the purview of section 15 with other members of PMA, many of whom are admittedly common carriers by water or other persons subject to the Act.³ It is my conviction that the members of PMA entered into and carried out a "co-operative working arrangement" which, as I have noted, required this Commission's approval as a prerequisite to its effectuation under the explicit language of the statute.

² Unlike the Examiner, I find nothing in section 15 "inane." Nor did the Commission in *Unapproved Sect. 15 Agreements—S. African Trade*, 7 FMC 159 (1962) at page 190, find the phrase "inane" or superfluous:

"Accordingly, section 15 requires—as it has for the 45 years since enacted—the filing of a copy, or 'if oral' a true and complete memorandum, of 'every agreement' covering any of the wide range of anticompetitive activities therein mentioned, 'or in any manner providing for an exclusive, preferential, or cooperative working arrangement.'"

³ The agreement or agreements between PMA and ILWU are clearly labor-management agreements and consequently are not within the reach of the Act. While these agreements may have triggered the arrangement by the membership of PMA, the PMA-ILWU compacts are irrelevant to the central issue here.

(Report of Commission 62-63)

725a

Report of the Commission

I agree with the majority's statement that the legislative history of the Act makes it clear that section 15 was intended to apply only to those cooperative working arrangements "which affect that competition which in the absence of the agreement would exist between the parties when dealing with the shipping . . . public . . .". (p. 6), but I read this record as definitely affecting (1) the shippers of automobiles rate-wise, and (2) the competition [63] among PMA members themselves with respect to the discharge rates that they may offer automobile shippers. While "agreements . . . to pool secretarial workers or share office space" may be co-operative working arrangements not within the scope of section 15 as the majority says at page 7, certainly a working agreement to raise 29 million dollars over a five and one-half year period, through detailed and uniform assessments relating to cargo handled, is a different situation and is hardly akin to a secretary pool in my opinion. Furthermore, it is different not only in size but, more importantly, in character.

The record illustrates that PMA knew the assessment had to be passed on to the cargo, at least to automobiles.⁴ A telegram from Brady-Hamilton, one of the PMA members who handled Volkswagens states:

The position of the Committee, that the assessment on unboxed auto is the responsibility of the stevedore to pay, appeared to attempt to release [PMA] from any responsibility, to the extent that the stevedore could be entirely free to absorb all of the assessments if he desired. The cost of this assess-

⁴ PMA also knew that assessments against Army cargo were passed on. PMA's records show that lest Volkswagen get relief, the Army would be next in line; ". . . they are still querulous about the propriety of such contributions." (Ex. 22).

(Report of Commission 63-64)

726a

Report of the Commission

ment is so much greater as compared to the stevedoring cost it could never be considered. . . . (Ex. 24).

Marine Terminals, as well, advised PMA on November 29, 1961, (Ex. 25): "There is no way that the contractor could absorb such an increase . . ." and an inter-office PMA memo of December 13, 1961, (Ex. 27) states:

The Committee at present feels that the tonnage formula does not work an inordinate hardship *on the shipper*. . . . (Emphasis added).

In a letter dated March 1, 1961, Marine Terminals advised PMA of its difficulties in collecting contributions to the Mech Fund assessed against Volkswagens:

We have informed them that we at Marine Terminals are merely following out the instructions set forth by the Board of Directors of the Pacific Maritime Association and *therefore are considered only a collection agency in this matter*.

We find ourselves in a very awkward position and wish to be advised of the *committee's decisions on how automobiles will be assessed* and what stand we can take in demanding payment of this assessment. (Ex. 9) (Emphasis added).

[64] The "collection agency" designation becomes more than a unilateral misconception on Marine Terminals' part when PMA's minutes of December 13, 1961, (Ex. 2H) are examined:

Chairman read a communication from the Funding Committee covering the problem of collecting funds *from Volkswagen* due the Mechanization Fund . . . Marine Terminals requested that a letter covering

(Report of Commission 64)

727a

Report of the Commission

this discussion be forwarded to them and that they be authorized to bring suit against Volkswagen for the monies due. Marine Terminals also requested that PMA give both legal and moral support on the Volkswagen suit. It was agreed that PMA will give such support and will participate in any legal action taken and that the matter will be turned over to PMA Legal Counsel. (Emphasis added).

Again, PMA's minutes of March 14, 1963, (Ex. 2C) show:

On the matter of mechanization assessments Counsel recommended an escrow account for payments by the stevedores *on behalf of Volkswagenwerk*. The Board of Directors this morning took no action to modify its previous position that the contributions be paid currently. (Emphasis added).

In my view, these exhibits⁵ reveal a co-operative working arrangement by members of PMA relating to the fixing or regulating of transportation rates, at least so far as automobiles and possibly Army cargo are concerned. It is of no moment that a formal, legally binding contract to assess certain tolls upon cargo has not been produced. "Section 15 is not concerned with formality but with the actual effect of the arrangement." *Unapproved Sect. 15 Agreements—S. African Trade*, *supra* at 188. The failure of respondents and PMA to get prior approval for the plan from the Commission renders the effectuation of it unlawful. As stated in *Status of Carloaders and Unloaders*, 2 USMC, 761 (1946) at page 766:

⁵ The exhibits are contemporaneous records and as such are far more persuasive than the after-the-fact, self-serving statements of PMA witnesses to the contrary.

(Report of Commission 64-65)

728a

Report of the Commission

When carriers or "other persons" undertake, by agreement, to *fix* or *regulate* rates, . . . there must be performed a series of acts under the statute. (1) They must file the agreement with the Commission.

Due to the posture of the record and the narrow question under section 15 presented here, I do not reach the issue of approvability, under section 15, of PMA's plan in furtherance of the laudable social ends envisioned by its arrangements with ILWU. However, approvable or not, the parties are not relieved of their obligation to secure the approval of the Commission before they attempt to carry it out.

[65] In conclusion, I believe the majority seriously erred in not finding that the respondents, Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles) violated section 15 by being parties to, and carrying out, a co-operative working arrangement with other members of intervenor PMA without the prior approval of this agency.

By the Commission.

/s/ Thomas Lisi
THOMAS LISI
Secretary

(SEAL)

(Order of Commission 1)

729a

Order of Commission

(Filed October 13, 1965)

Served
October 13, 1965
Federal Maritime Commission

[1] FEDERAL MARITIME COMMISSION

No. 1089

VOLKSWAGENWERK AKTIENGESELLSCHAFT

v.

MARINE TERMINALS CORPORATION, *et al.*

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is incorporated herein by reference, THEREFORE,

IT IS ORDERED, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

/s/ Thomas Lisi
THOMAS LISI
Secretary

(SEAL)

(Petition for Review 1)

730a

Petition for Review
(Filed December 10, 1965)

[1] IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19840

VOLKSWAGENWERK AKTIENGESELLSCHAFT,
Petitioner,
v.

FEDERAL MARITIME COMMISSION and
UNITED STATES OF AMERICA,
Respondents.

**PETITION FOR REVIEW OF AN ORDER OF
THE FEDERAL MARITIME COMMISSION**

*To the Honorable Judges of the United States
Court of Appeals for the District of Columbia
Circuit:*

Volkswagenwerk Aktiengesellschaft ("petitioner" or "VW") hereby petitions this Court to review and set aside an Order of the Federal Maritime Commission dismissing a complaint filed by it with that agency alleging violations of the Shipping Act, 1916, in connection with the discharge of vehicles exported by it to this country.

Copies of the Order and of the report of the Federal Maritime Commission incorporated in such Order by reference are attached to the copies of this petition filed with this Court.

(Petition for Review 2-3)

731a

Petition for Review

[2] NATURE OF PROCEEDINGS

1. This proceeding involves the lawfulness, under the Shipping Act of 1916, as amended (39 Stat. 728, 46 U. S. C., Section 801 *et seq.*), of certain charges for the use of terminal services and facilities, including stevedoring, in connection with the discharge of automobile cargoes at San Francisco and Los Angeles.
2. Petitioner is a shipper of Volkswagen vehicles to the United States West coast. Approximately one-fourth of its Volkswagen vehicle cargoes entering the United States through the Pacific coast ports is carried by common carrier. The balance is transported on vessels chartered by VW. In 1961 and 1962 approximately 40,000 Volkswagen vehicles were discharged annually at these ports.
3. In its complaint before the Federal Maritime Commission ("Commission"), VW named as respondents Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles), hereinafter collectively referred to as "MTC". These companies are employed by VW to discharge at the ports of San Francisco and Los Angeles the automobiles sent there by VW by chartered vessels. They perform similar services for common carriers by water with respect to automobile cargoes, including those of VW.

- [3] 4. The charges which form the subject matter of VW's complaint to the Commission arise out of arrangements entered into by MTC as members of the Pacific Maritime Association ("PMA"). PMA made itself a party to the proceeding by intervening.

(Petition for Review 3-4)

732a

Petition for Review

5. PMA is an organization formed by common carriers serving the Pacific coast and companies engaged in furnishing stevedoring and terminal services and facilities at ports along this coast. It deals collectively with labor problems of its members. The by-laws of PMA ensure that ship operators, and more specifically liners, control its affairs. VW is not a member of PMA.

6. In 1960-61, PMA entered into collective bargaining agreements with the International Longshoremen's and Warehousemen's Union in which, in exchange for more efficient operations on the waterfront, it undertook on behalf of its membership to pay twenty-seven and one-half million dollars over a period of five and one-half years into a Mechanization and Modernization Fund ("Mech Fund") for the benefit of longshoremen, marine clerks and similar employees. These agreements exclude the union from any voice in the method by which this sum is to be raised. PMA reserved for itself alone the power to decide from whom, and how, this money is to be collected. [4] It is PMA's exercise of this reserved power that gives rise to the present proceeding, not its collective bargaining agreements which VW recognizes as a most praiseworthy achievement in labor relations.

7. By agreement of the membership of PMA the monies required for the Mech Fund are to be raised by a system of assessments against every ton of cargo loaded or discharged by the members. For all commodities, except automobiles, the ship's manifest determines how such tonnage is to be measured, that is, whether by measurement or by weight. The tonnage thus shown on the manifest is then multiplied by an amount fixed by PMA for that type of cargo to arrive at the amount to be paid PMA for purposes of the Mech Fund. Roughly speaking, each ton of bulk cargo pays 5-1/2 cents a ton, and each ton of general cargo, during the period of the proceedings below, paid 27-1/2 cents and thereafter,

(Petition for Review 4-6)

733a

Petition for Review

28- $\frac{1}{2}$ cents a ton. Automobiles, however, are an exception and they are assessed by measurement rather than by weight, regardless of how they are manifested. By measurement, the Volkswagen vehicles of petitioner have a tonnage approximately ten times as great as they do by weight. In manifesting automobiles, sometimes one measure and sometimes the other is employed. By requiring the tonnage of automobiles [5] to be reported by measurement rather than by weight, regardless how manifested, PMA ensured that the highest possible assessment would be levied on every automobile discharged on the Pacific coast. Under this assessment formula, the cost of discharge of automobiles is increased about ten times as much as is the average cost of discharge of other general cargo, 26 percent as against 2.2 percent. Direct labor costs are affected in the same proportion.

8. No benefits from the Mech Fund are expected to accrue to automobiles in proportion to the burdens imposed. Stevedoring of cars has always been an efficient and economical operation. Auto shippers will, however, receive some general benefits such as freedom from strikes or slowdown, from the Fund plan.

9. The agreements, understandings and arrangements among the members of PMA, pursuant to which charges for the Mech Fund have been assessed have never been submitted to the Federal Maritime Commission for its approval as cooperative working arrangements among carriers and other persons subject to the Shipping Act of 1916 in accordance with section 15 of that Act (39 Stat. 733, 46 U. S. C., section 814). The Commission has not given its approval to these arrangements pursuant to section 15 of that Act.

[6] 10. MTC has attempted to pass on to petitioner the charges for the Mech Fund assessed by PMA for the ve-

(Petition for Review 6-7)

734a

Petition for Review

hicles shipped by petitioner through the port facilities of MTC.

11. Petitioner has declined to pay the special charges for the Mech Fund on the grounds that the charges could not lawfully be made without prior approval of the aforesaid cooperative working arrangements under section 15 of the Shipping Act of 1916; that the charges are in violation of sections 16 and 17 of the Shipping Act of 1916 (39 Stat. 734, 46 U. S. C., sections 815 and 816) by singling out petitioner's automobiles for excessive charges.

12. VW applied without success to PMA for modification of its inequitable and unfair formula. Any change in the formula reducing the assessment on automobiles would not be in the self interest of the majority of members of PMA since, in order to raise the lump sum needed for the Mech Fund, such reduction would have to be balanced by an increase in the amount paid on cargo carried by the shipping lines which dominate PMA.

13. Before the Mech Fund, VW paid approximately \$10.45 per vehicle for stevedore and terminal handling. The margin of profit to the stevedore or terminal operator [7] was one dollar or less. Since the PMA assessment for the Mech Fund averages \$2.35 per vehicle, it cannot be absorbed by the stevedore or terminal operator out of profit.

14. As a consequence of petitioner's refusal to pay the charges for the Mech Fund, MTC made no payments to PMA on the discharge of Volkswagen vehicles arriving by chartered vessels. However, payments have been made into the Mech Fund by MTC and other stevedores and terminal operators on all Volkswagen automobiles arriving at the Pacific coast by common carrier, with some minor exceptions.

(Petition for Review 7-8)

735a

Petition for Review

15. PMA has filed a libel against MTC and others in the United States District Court for the Northern District of California, Southern Division, for recovery of the assessments on the discharge of Volkswagen vehicles arriving by chartered vessel. MTC joined petitioner as a party by interpleader. Upon request of petitioner, the District Court stayed the proceedings pending decision by the Federal Maritime Commission of the questions raised by petitioner's objections to the charges. Thereafter, petitioner filed the complaint with the Federal Maritime Commission in which the order was entered which is made the subject of this review. The complaint charged violations of sections 15, 16 and 17 of the Shipping Act.

[8] 16. Section 15 of the Shipping Act of 1916 provides, in part:

"That every common carrier by water, or other person subject to this Act, shall file immediately with the Commission a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; . . . controlling, regulating, preventing, or destroying competition; . . . or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term 'agreement' in this section includes understandings, conferences, and other arrangements."

An agreement within section 15 requires approval by the Commission before it can be carried out lawfully. Petitioner alleged in its complaint to the Federal Maritime Com-

(Petition for Review 8-9)

736a

Petition for Review

mission that MTC was a party to an agreement covered by this section and that since this agreement had never been filed nor approved by the Commission, it could not legally be executed and carried out by MTC.

17. Petitioner further contended that the agreement could not be approved by the Commission after it was filed because it is unjustly discriminatory and unfair as between shippers and importers, operates to the detriment of the commerce of the United States, is contrary to the public interest and is in violation of sections [9] 16 and 17 of the Shipping Act, 1916, in that it imposes upon automobile cargoes a disproportionately high share of the costs of the Mech Fund.

18. PMA's formula and the assessments made thereunder were attacked as subjecting petitioner and automobile cargoes to undue and unreasonable prejudice and disadvantage in violation of section 16 of the Shipping Act. Furthermore, MTC was alleged to be engaged in an unjust and unreasonable practice related to and connected with receiving, handling, storing and delivering of property in violation of section 17.

19. Hearings were held and evidence taken by a Hearing Examiner on the complaint. In an initial decision rendered on June 4, 1964, setting forth findings of fact and conclusions, the Examiner found no violations of sections 15, 16 or 17. Although he found that there existed a "cooperative working arrangement" among "persons subject" to the Act, he held that such cooperative working arrangement was not within the purview of section 15 because, in his view, it did not pertain to ocean transportation and was not in the same general class as those specifically enumerated by that section.

(Petition for Review 10-11)

737a

Petition for Review

20. The Examiner found no violation of section [10] 16 because there was no discrimination as between Volkswagen automobiles and other automobiles and there is no other cargo classification in competition with automobiles. He likewise exonerated MTC of any violation of section 17 on the ground that MTC was justified in passing on "an operating expense applicable to the discharge of automobiles."

21. Petitioner filed exceptions to the conclusions, findings and statements in the initial decision and a brief in support to which replies were filed. Oral argument thereon was heard by the Commission.

22. Thereafter, the Commission issued its Order dismissing the complaint. Incorporated in this Order, by reference, is the Commission's report stating its conclusions and decision. Two Commissioners dissent. The report does not adequately state whether the Commission adopts or rejects the findings of the Examiner, or whether it accepts or rejects petitioner's exceptions to such findings.

23. The Commission found nothing "in the agreements of record in this proceeding which brings them within the purview of section 15." That section it held, applied "only to those agreements involving practices which affect that competition which in the absence of the [11] agreement would exist between the parties when dealing with the shipping or travelling public or their representatives." In the view of the Commission, the agreement among the membership of the PMA regarding the amount to be paid into the Mech Fund on each ton of cargo loaded or discharged did not satisfy these requirements.

24. For this agreement to be embraced within section 15, the Commission held there would have to exist "an addi-

(Petition for Review 11-12)

738a

Petition for Review

tional agreement by the PMA membership to pass on all or a portion of its assessments to the carriers and shippers served by the terminal operators." It found the record "devoid of evidence showing the existence of such an additional agreement."

25. The Commission sustained the Examiner in finding no violation by MTC of sections 16 or 17.

26. Commissioner Patterson dissented from all the Commission's conclusions. He found that MTC had violated sections 15, 16 and 17 of the Act. Commissioner Hearn concurred with the majority in finding no violations of sections 16 and 17 but held that MTC had violated section 15 by being parties to, and carrying out, a cooperative working arrangement with the other members [12] of PMA without the prior approval of such arrangement by the Commission. However, he did not reach "the issue of approvability," under that section of PMA's plan.

JURISDICTION AND VENUE

27. The jurisdiction of the Court is invoked under section 31 of the Shipping Act of 1916, as amended, 39 Stat. 738, 46 U. S. C., section 830, sections 2 and 9 of the Judicial Review Act, as amended, 64 Stat. 1129 and 64 Stat. 1131, 5 U. S. C., sections 1032 and 1039 and section 10 of the Administrative Procedure Act, 60 Stat. 243, 5 U. S. C., section 1009.

28. VW is adversely affected and aggrieved by the Order of the Commission sought to be set aside dismissing its complaint and terminating the proceeding in that it is a shipper on common carriers which are paying the assess-

(Petition for Review 12-13)

739a

Petition for Review

ments levied under the arrangement under attack, it is a charterer and employer of stevedoring contractors and terminal operators which are parties to that arrangement and which are engaged in the acts and practices and imposing the charges challenged in the Commission proceeding and it is the complainant in such proceeding.

29. Section 2 of the Judicial Review Act, 5 U. S. C., [13] section 1032, authorizes the filing of petitions for review of orders of the Federal Maritime Commission in Courts of Appeals of the United States. Section 3 of that Act, 5 U. S. C., section 1033, permits the filing of the petition in the United States Court of Appeals for the District of Columbia Circuit. Thus, venue is proper.

GROUND ON WHICH RELIEF IS SOUGHT

30. In issuing the Order of which review is sought, the Commission disregarded and violated its obligations under the Shipping Act of 1916 and the Administrative Procedure Act.

31. The Shipping Act of 1916 governs the conduct of common carriers by water and of any other persons carrying on the business of forwarding or furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water. The Act uses the term "other person[s]" to cover the latter group. MTC are "other person [s]" within the meaning of the Act. All, or substantially all the other members of PMA are likewise covered by the Shipping Act, either as "other person[s]" or as common carriers by water.

(Petition for Review 14-15)

740a

Petition for Review

[14] 32. The Commission erred in finding that the cooperative working arrangement among MTC and the other members of PMA regarding collection of the Mech Fund is not subject to section 15 of the Shipping Act of 1916. Section 15 of the Shipping Act embraces all concerted action by common carriers and related persons affecting the entire spectrum of services connected with marine transportation. The only interpretation of section 15 which is consistent with its legislative history and with its past administrative construction is that whenever persons subject to the Shipping Act engage in concerted action, they bring themselves within the reach of that section. The cooperative working arrangement among the membership of PMA affected the loading and discharge of ocean cargo and was subject to section 15.

33. The Commission erroneously concluded that section 15 of the Shipping Act embraces only agreements involving practices which affect that competition which in the absence of the agreement would exist between the parties when dealing with the shipping or travelling public or their representatives.

34. Even under the standard adopted by the Commission it erred in failing to find that an agreement among stevedores and terminal operators to impose an [15] artificial and unwarranted charge upon the discharge of every automobile unloaded by them is not an interference with competition.

35. In view of the obligation of the Commission to investigate complaints filed with it setting forth violations of the Act, the Commission erred in dismissing petitioner's complaint because it viewed the record as devoid of evi-

(Petition for Review 15-16)

741a

Petition for Review

dence of the existence of an agreement by the PMA membership to pass on all, or a portion of, its assessments to the carriers and shippers served by the terminal operators. If the Commission deemed the existence of such an agreement critical to the issue of a violation of the Act, it was under an obligation to investigate further.

36. The Commission erred in holding in effect that an explicit agreement to pass on the PMA assessment was necessary to invalidate the cooperative working arrangement among the membership of PMA since irrespective of whether such an explicit agreement existed or not, such arrangement in operation, due to economic necessity, was the exact equivalent of, and had the same economic effect, as an explicit agreement and such result was intended and anticipated by PMA membership in adopting such arrangement.

[16] 37. The Commission erred in finding no violation of section 16 of the Act by MTC. The fact that petitioner's automobiles have not been subjected to prejudice or disadvantage as compared to other automobiles is not decisive. Petitioner's automobiles have been discriminated against in comparison with other traffic by MTC in execution of the PMA agreement. Whereas all other traffic is assessed in accordance with the way it is manifested, petitioner's automobiles are assessed on the basis of measurement tonnage, regardless how manifested. Furthermore, a burden disproportionate to any benefit received has been imposed upon petitioner's automobiles in comparison with other traffic.

38. The Commission erred in finding no violation of section 17 of the Shipping Act of 1916. Section 17 requires every common carrier by water in foreign commerce and

(Petition for Review 16-18)

742a

Petition for Review

every other person subject to the Act to "establish, observe and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing or delivering of property." MTC is a person subject to the Act. MTC, by reason of its membership in PMA, violated section 17 in:

- (a) adopting an unfair and unjust method of allocating to property received, handled, stored and [17] delivered by it a common cost, i.e., the Mech Fund;
- (b) accepting the obligation to make, and making, regular monthly payments to PMA in accordance with such allocation; and
- (c) including in their stevedoring rate the amount allocated pursuant to the method adopted.

39. The Commission erred in disregarding and failing to rule on petitioner's contention that entry by MTC into the agreement with PMA regarding the allocation of the cost of the Mech Fund and their execution of such agreement were unreasonable practices under section 17.

40. The Commission erred in interpreting section 17 as permitting users of the same facility to be charged amounts not directly related to the benefits derived therefrom so long as each one receives some "substantial benefits."

41. The Commission erred in interpreting section 17 as applicable to the charges imposed upon petitioner only in the event that it could be shown that they were imposed because of a design deliberately to burden petitioner more than other users of stevedores and terminal facilities with the cost of the Mech Fund. But [18] even if this inter-

(Petition for Review 18-19)

743a

Petition for Review

pretation had been correct, the Commission erred in failing to find such a design present here.

42. The Commission violated its obligations under section 8 of the Administrative Procedure Act (5 U. S. C., section 1007) in failing to make findings upon the material issues of fact and law presented; in failing to rule adequately on petitioner's exceptions to the decision of the Hearing Examiner; and in failing to state conclusions which have a rational basis in law or fact in support of its rulings.

43. The Commission's Order, of which review is sought, is based upon statements which are unsupported by substantial evidence, is arbitrary and capricious and is not in accordance with law.

PRAYER FOR RELIEF

WHEREFORE, petitioner prays:

(1) That copies of this petition be served upon the respondent agency and upon the Attorney General of the United States in accordance with section 4 of the Judicial Review Act, 5 U. S. C., section 1034;

[19] (2) That a transcript of the record upon which the Order in question was entered be certified and filed in this Court in accordance with section 6 of the Judicial Review Act, as amended, 5 U. S. C., section 1036 and with 28 U. S. C., section 2112;

(3) That this Court review the Order of the Federal Maritime Commission dismissing petitioner's complaint;

(4) That upon review, this Court set aside said Order;

(Petition for Review 19-20)

744a

Petition for Review

- (5) That this Court find that the Commission's Order is contrary to law and in derogation of the Shipping Act, 1916, and of the Administrative Procedure Act;
- (a) That this Court find that MTC has violated sections 15, 16 and 17 of the Shipping Act of 1916; and
- (6) That petitioner have such other and further relief as may to the Court seem just and proper.

[20] Respectfully submitted,

/s/ Richard A. Whiting
/s/ Robert J. Corber

STEPTOE AND JOHNSON,
1250 Connecticut Ave. N. Y.,
Washington, D. C. 20036,
Attorneys for Petitioner.

HERZFIELD & RUBIN,
Office and Post Office Address,
40 Wall Street,
New York, N. Y. 10005
of Counsel.

PILLSBURY, MADISON & SUTRO,
Office and Post Office Address,
225 Bush Street,
San Francisco 4, California
of Counsel.

(Stipulation re Issues, etc. 1)

745a

**Stipulation as to Issues and Procedures
to be Followed**

(Filed March 8, 1966)

[1] IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
No. 19840

VOLKSWAGENWERK AKTIENGESELLSCHAFT,
Petitioner
against

FEDERAL MARITIME COMMISSION and
UNITED STATES OF AMERICA,
Respondents

PACIFIC MARITIME ASSOCIATION and
MARINE TERMINALS CORPORATION,
Intervenors

Subject to the approval of the Court, it is hereby stipulated and agreed between the parties, through their respective counsel, that the issues and the subsequent procedures to be followed herein shall be:

I

ISSUES

1. In the view of petitioner the following issue is presented:

(Stipulation re Issues, etc. 2-3)

746a

*Stipulation as to Issues and Procedures
to be Followed*

[2] Whether Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles) (hereinafter collectively referred to as "MTC") are "carrying on the business *** of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water" so as to be subject to the Shipping Act of 1916, as amended, as "other person[s]."

2. Petitioner, Respondents and Intervenor Pacific Maritime Association (hereinafter "PMA") agree that the following issue is presented:

Did the Commission err in determining that no agreement subject to Section 15 existed between MTC and other members of PMA with respect to the assessments referred to on pages 2 and 3 of the Commission report?

MTC would state the above issue as follows:

Did the record permit the Commission to find and conclude in the proper exercise of its discretion, that, assuming MTC to be a person subject to the Act, no additional agreement subject to Section 15 existed between it and other members of PMA or that no violation of Section 15 had been shown?

[3] 3. Petitioner and Respondents agree that the following issue is presented:

Did the Commission err in determining that MTC, in connection with the assessments referred to above, did not violate the prohibitions of Section 16 First against making or giving undue or unreasonable preference or advantage to any particular person, locality or description of traffic in any respect whatsoever, or against subjecting any particular person, locality or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever?

(Stipulation re Issues, etc. 3-5)

747a

*Stipulation as to Issues and Procedures
to be Followed*

It is the position of Petitioner that this issue should properly be phrased so as to refer to conduct of MTC in conjunction with others as well as by themselves.

PMA and MTC would state this issue as follows:

Did the record permit the Commission to find and conclude, in the proper exercise of its discretion, that MTC, assuming it to be a person subject to the Act, did not, by including in its charges to Petitioner its full labor costs, violate the prohibitions of Section 16 against making [4] or giving undue or unreasonable preference to any person or description of traffic or against subjecting any person or description of traffic to undue or unreasonable prejudice or disadvantage?

4. Petitioner and Respondents agree that the following issue is presented:

Did the Commission err in determining that MTC, in connection with the assessments referred to above, did not violate the provisions of Section 17 requiring the establishment, observance and enforcement of just and reasonable regulations and practices relating to or connected with the receiving, handling, storing or delivering of property?

It is the position of Petitioner that this issue should properly be phrased so as to refer to conduct of MTC in conjunction with others as well as by themselves.

PMA and MTC would state this issue as follows:

Did the record permit the Commission to find and conclude, in the proper exercise of its discretion, that MTC, assuming it to be a person subject to the Act, did not, by including in its charges to Petitioner its full labor costs, violate the [5] prohibitions of

(Stipulation re Issues, etc. 5-6)

748a

*Stipulation as to Issues and Procedures
to be Followed*

Section 17 against unreasonable practices relating to the handling of property?

5. All parties agree that the following issue is presented:

Whether the Federal Maritime Commission in Docket No. 1089 complied with the provisions of Section 8 of the Administrative Procedure Act (5 U. S. C. Section 1007)? In particular, did the Commission make findings upon each of the material issues of law and fact presented and did it rule adequately on Petitioner's exceptions to the decision of the Hearing Examiner?

6. All parties agree that the following issue is presented:

Whether the conclusions of the Commission in the order dismissing Petitioner's complaint support its order and are, in turn, supported by adequate findings, substantial evidence in the record and rational bases in the law?

II

PROCEDURES WITH RESPECT TO PRINTING OF THE
JOINT APPENDIX AND USE OF UNPRINTED PORTIONS
OF THE RECORD

In preparing and printing briefs, record [6] references shall be to the pages of the documents before the agency as certified to the Court. The joint appendix shall be printed with the page numbers of these documents as certified in this Court appearing at the place where each new document page begins on the printed page of the joint appendix, and running heads showing the document pages appearing thereon shall be printed at outer top corners of each page of the printed joint appendix. The usual numerical pagina-

(Stipulation re Issues, etc. 6-7)

749a

*Stipulation as to Issues and Procedures
to be Followed*

tion of the printed joint appendix will appear in the center of the top of the page.

Parties may serve briefs in typewritten or mimeographed form or printer's proofs, provided that printed copies of such briefs shall thereafter be filed with the Court and served upon opposing parties within ten days after the due date of the reply brief. In all instances, at least three copies of each brief shall be served on counsel for each opposing party.

Designation of the portions of the certified record to be reproduced in the joint appendix shall be made within five days after the briefs of Respondents and Intervenors are filed.

Within ten days after the due date of the reply brief, the Petitioners shall cause the joint appendix to be printed and filed with the Court and served upon the Respondents.

[7] Any party and the Court, at and following the hearing in this case, may refer to any portion of the original transcript of record herein which does not appear in the joint appendix to the same extent and effect as though such portions of the transcript had appeared in such appendix.

.....
WALTER H. MAYO, III, Esquire
Federal Maritime Commission
1321 H. Street, N. W.
Washington, D. C. 20573

.....
IRWIN A. SEIBEL, Esquire
United States Department of Justice
Washington, 25 D. C.

(Stipulation re Issues, etc. 7)

750a

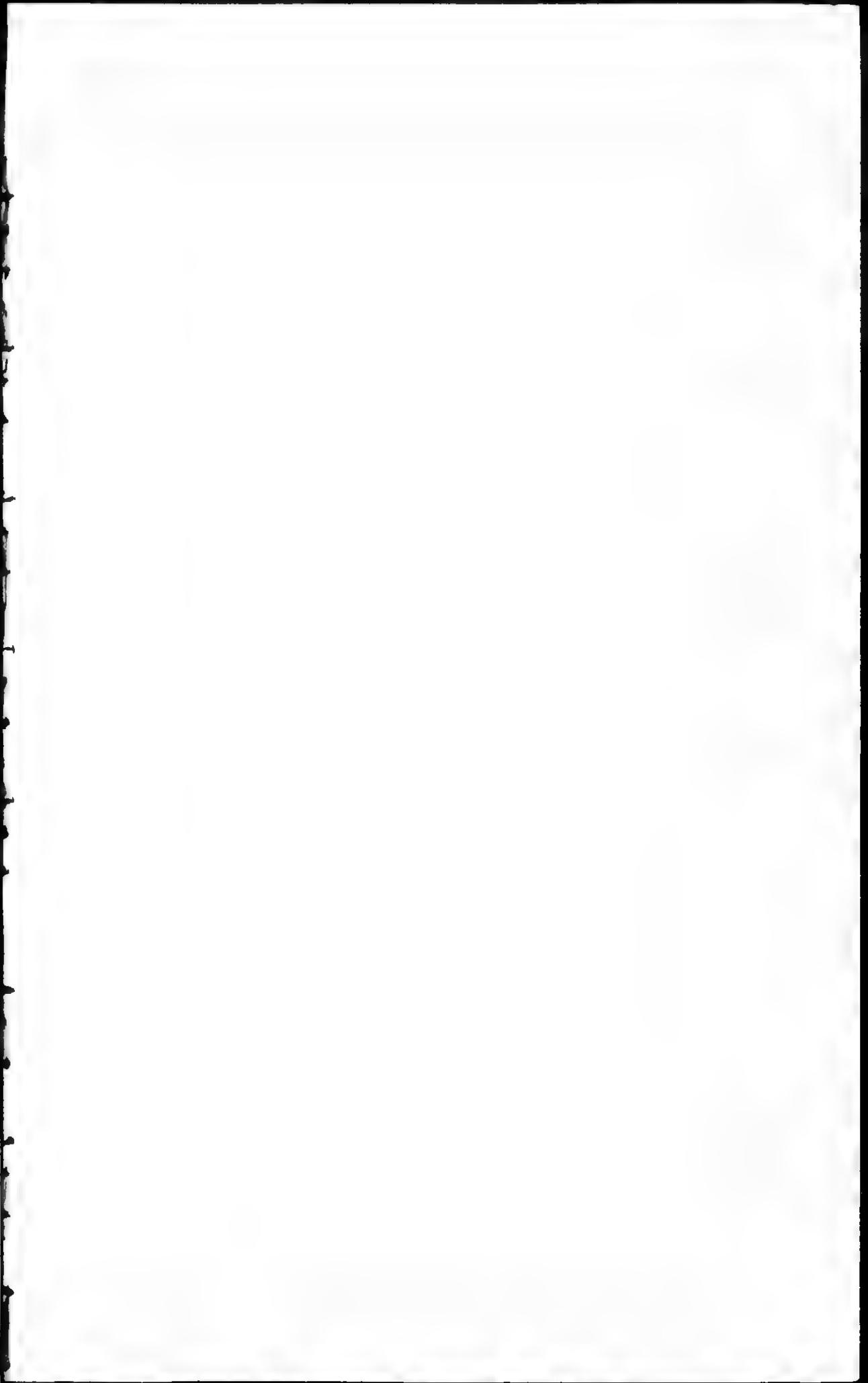
*Stipulation as to Issues and Procedures
to be Followed*

.....
RICHARD A. WHITING, Esquire
ROBERT J. CORBER, Esquire
1250 Connecticut Ave., N. W.
Washington, D. C. 20036
Attorneys for Petitioner

.....
EDWARD D. RANSOM, Esquire
LILLICK, GEARY, WHEAT, ADAMS
& CHARLES
311 California Street
San Francisco, California 94104
Attorney for Intervenor Pacific
Maritime Association

.....
JOHN EDWARD HURLEY, Jr., Esquire
WILLIAM W. SCHWARZER, Esquire
McCUTCHEN, DOYLE, BROWN, TRAUTMAN
& ENERSEN
601 California Street
San Francisco, California 94108
Attorneys for Intervenor Marine
Terminals Corporation

7828 5 48



*113-7-2
6-15-66
31*

F 727
BRIEF FOR PETITIONER

IN THE
**United States Court of Appeals
For the District of Columbia Circuit**

No. 19,840

VOLKSWAGENWERK AKTIENGESELLSCHAFT,
Petitioner,

against

**FEDERAL MARITIME COMMISSION and
UNITED STATES OF AMERICA,**
Respondents,

**PACIFIC MARITIME ASSOCIATION and
MARINE TERMINALS CORPORATION,**
Intervenors.

**On Petition to Review and Set Aside Order of the
Federal Maritime Commission**

RICHARD A. WHITING
ROBERT J. CORBER
STEPTOE & JOHNSON
1250 Connecticut Avenue, N.W.
Washington, D. C. 20036
Attorneys for Petitioner

WALTER HERZFELD
CECILIA H. GOETZ
BERNARD J. WALD
HERZFELD & RUBIN
40 Wall Street
New York, N. Y. 10005

United States Court of Appeals
for the District of Columbia Circuit

FILED MAY 31 1966

STANLEY J. MADDEN
PILLSBURY, MADISON & SUTRO
225 Bush Street
San Francisco, California 94104
Nathan J. Paulson
CLERK
Of Counsel

Statement of Questions Presented

Through the Pacific Maritime Association ("PMA"), the major common carriers and related enterprises serving the Pacific coast have agreed with a waterfront union to raise a twenty-nine million dollar fund to offset the adverse effects on labor of mechanization and modernization. To meet this obligation, these enterprises have independently agreed among themselves that on each ton of cargo loaded or discharged at Pacific coast ports there shall be paid PMA an amount computed under a formula which fixes different rates for different commodities. Did the Federal Maritime Commission err in holding that this latter agreement among persons subject to the Shipping Act of 1916, as amended, is not a section 15 agreement? Further, did the Commission err in holding that the prohibitions of sections 16 and 17 of that Act, barring discriminatory acts and discriminatory practices, are not breached by putting this agreement into effect and by seeking to collect from petitioner the amounts assessed under the tonnage formula on the discharge of Volkswagen vehicles?*

* This is an abbreviated statement of the issues. A more detailed statement is contained in counsels' prehearing stipulation reproduced in full in the Joint Appendix.

INDEX

	<u>PAGE</u>
Jurisdictional Statement	1
Statement of the Case	2
The Mechanization and Modernization Fund ...	3
The Cooperative Working Arrangement for Raising \$5,000,000 Annually	4
Disproportionate Burden Imposed on Auto- mobiles	6
How the Self-Interest of PMA's Membership Is Served by the Cooperative Working Arrange- ment	9
VW's Unsuccessful Efforts to Reduce PMA's Assessments on Its Vehicles	11
Changes in the PMA Formula	13
Efforts by PMA to Collect the Assessments on Volkswagen Automobiles	15
The Proceedings Before the Commission	17
Statute Involved	20
Statement of Points	20
Summary of Argument	21
 <u>ARGUMENT</u>	
Point I.—In concluding that PMA's assessments involved no agreement subject to section 15, the Commission devitalized the Shipping Act	24
A. In enacting the Shipping Act it was the inten- tion of Congress to subject collective action in the maritime industry to Governmental scrutiny	24

	PAGE
B. The PMA agreements relating to the Fund are among persons subject to the Act	27
C. PMA's agreements fix transportation rates, regulate competition, and provide for a co-operative working arrangement	27
D. In interpreting section 15 to exclude PMA's cooperative working arrangement, the Commission has done violence both to the language and purpose of the Act	29
E. None of the authorities cited by the Commission support its strained construction of section 15	32
F. The cooperative working arrangement here involved represents the type of abuse of private power which the Shipping Act was designed to end	35
 POINT II—Even under the Commission's interpretation of section 15, PMA's agreements are covered	36
POINT III—The Commission erred in finding no violation of section 16	39
POINT IV—The Commission erred in finding no unreasonable practice by MTC in violation of section 17	42
A. Section 17 embraces every practice of MTC in execution of the PMA agreement, not solely the inclusion of the PMA tax in their charges to VW	42
B. Each and every constituent practice involved in the execution of the cooperative working arrangement is unfair and unreasonable	44
Conclusion	49
Appendix	la

Table of Cases Cited

	PAGE
Agreements No. 8225 and 8225-1, 5 F.M.B. 648 (1959), aff'd. Greater Baton Rouge Port Comm'n v. United States, 287 F.2d 86 (5th Cir. 1961), cert. denied, 368 U.S. 985 (1962)	28
Airlines Negotiating Conference Agreements, 8 C.A.B. 354 (1947)	33
California Stevedore & Ballast Co. v. Stockton Eleva- tors, Inc., Dkt. No. 1000 (Apr. 21, 1964)	45
California Stevedore & Ballast Co. v. Stockton Port District, 7 F.M.C. 75 (1962)	45
* California v. United States, 320 U.S. 577 (1944) 27, 40, 45, 46	
Carloading at Southern California Ports (Agree- ment No. 7576), 2 U.S.M.C. 784 (1946)	27
Carnation Co. v. Pacific Westbound Conference, 383 U. S. 213 (1966)	34, 44
*D. L. Piazza Co. v. West Coast Line, Inc., 3 F.M.B. 608 (1951)	39, 45
Evans Cooperage Co., Inc. v. Board of Comm'rs of the Port of New Orleans, 6 F.M.B. 415 (1961) ..	46
Federal Maritime Board v. Isbrandtsen Co., 356 U.S. 481 (1958)	25
In the Matter of Agreement 6210, 2 U.S.M.C. 166 (1939)	45
In the Matter of Agreement No. 8905, Port of Seattle- Alaska Steamship Co., 7 F.M.C. 792 (1964)	28
In the Matter of Wharfage Charges & Practices at Boston, Mass., 2 U.S.M.C. 245 (1940)	28

*Cases or authorities chiefly relied upon are marked by asterisks.

PAGE

Investigation of Certain Storage Practices, 6 F.M.B. 301 (1961)	27, 45
Kennedy v. Long Island R. R., 211 F. Supp. 478 (S.D.N.Y. 1962), aff'd, 319 F. 2d 366 (2d Cir. 1963), cert. denied, 375 U. S. 830 (1963)	32
McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819)	35
*New York Foreign Freight Forwarders & Brokers Ass'n v. Federal Maritime Comm'n, 337 F. 2d 289 (2d Cir. 1964), cert. denied, 380 U.S. 914 (1965)...	40
Practices, etc. of San Francisco Bay Area Terminals, 2 U.S.M.C. 588 (1941), aff'd sub. nom., California v. United States, 46 F. Supp. 474 (N.D. Cal. 1942), aff'd, 320 U.S. 577 (1944)	45
Six-Carrier Mutual Aid Pact, 29 C.A.B. 168 (1959)	33
Status of Carloaders and Unloaders, 2 U.S.M.C. 761 (1946)	27, 28
Storage Practices at Longview, Wash., 6 F.M.B. 178 (1960)	45
*Terminal Rate Structure—Pacific Northwest Ports, 5 F.M.B. 53 (1956)	42, 46
*United States v. American Union Transp., 327 U.S. 437 (1946)	30, 33, 36

*Cases or authorities chiefly relied upon are marked by asterisks.

Table of Statutes Cited

	PAGE
Administrative Procedure Act:	
Section 10 (5 U.S.C., section 1009)	2
Federal Aviation Act:	
Section 412 (49 U.S.C., section 1382)	36
Interstate Commerce Act:	
Section 5(1) [48 U.S.C., section 5(1)]	32
Judicial Review Act:	
Section 2 (5 U.S.C., section 1032)	2
Section 9 (5 U.S.C., section 1039)	2
Shipping Act of 1916:	
Section 1 (46 U.S.C., section 801)	26
Section 14 (46 U.S.C., section 812)	26
Section 15 (46 U.S.C., section 814)	24-39
Section 16 (46 U.S.C., section 815)	39-41
Section 17 (46 U.S.C., section 816)	42-48
Section 31 (46 U.S.C., section 830)	2

Table of Other Authorities Cited

*Alexander Report, Proceedings of the House Committee on the Merchant Marine and Fisheries in the Investigation of Shipping Combinations Under H. Res. 587, 63d Cong., 2d Sess. (1914)	25
53 Cong. Rec. 8276 (1916)	26

*Cases or authorities chiefly relied upon are marked by asterisks.



IN THE
United States Court of Appeals
For the District of Columbia Circuit

No. 19,840

VOLKSWAGENWERK AKTIENGESELLSCHAFT,

Petitioner,

against

FEDERAL MARITIME COMMISSION and
UNITED STATES OF AMERICA,

Respondents,

PACIFIC MARITIME ASSOCIATION and
MARINE TERMINALS CORPORATION,

Intervenors.

On Petition to Review and Set Aside Order of the
Federal Maritime Commission

BRIEF FOR PETITIONER

Jurisdictional Statement

This is a petition to review and set aside an Order of the Federal Maritime Commission ("Commission"), served October 15, 1965, dismissing, over two dissents, a complaint filed by petitioner, Volkswagenwerk Aktiengesellschaft ("VW"), in a proceeding entitled *Volkswagenwerk Aktiengesellschaft v. Marine Terminals Corp., et al.*, Docket No. 1089.

The complaint challenged the lawfulness under the Shipping Act of 1916, as amended (39 Stat. 728, 46 U.S.C., sections 801 *et seq.*) of certain charges which are being im-

posed by private agreement on all cargo loaded or discharged at Pacific coast ports and which burden Volkswagen automobiles disproportionately to all other cargo.

Jurisdiction exists in this Court under section 31 of the Shipping Act of 1916, as amended (39 Stat. 738, 46 U.S.C., section 830), under sections 2 and 9 of the Judicial Review Act, as amended (64 Stat. 1129 and 1131, 5 U.S.C., sections 1032 and 1039) and under section 10 of the Administrative Procedure Act (60 Stat. 243, 5 U.S.C., section 1009).

Statement of the Case

At issue in this proceeding is the applicability of various provisions of the Shipping Act of 1916 ("Act") to what is best described as a discriminatory tax levied by agreement among the maritime enterprises serving the Pacific coast upon the privilege of discharging, or loading, Volkswagen vehicles and all other cargo.

This tax is the creation of Pacific Maritime Association ("PMA") to which about one hundred and twenty companies belong (Exs. 46-48 [538a-587a]).* This is an association formed by common carriers by water serving the Pacific coast and stevedoring contractors and terminal operators engaged in business there (R. 1 [666a-687a]; Ex. 3, pp. 5-6 [382a-384a]). It was organized for the purpose of negotiating and administering collective bargaining agreements (342 [179a]). By intervening, PMA has made itself a party to this appeal, as it did below.

* Numerals in parenthesis preceded by "Ex." refer to exhibits. Those not otherwise identified are to pages of the stenographic transcript of the hearing herein. "I.D." indicates the initial decision of the hearing examiner, "R," the report filed by the Commission, "P," the dissenting opinion written by Commissioner Patterson, and "H," the dissenting opinion of Commissioner Hearn. Wherever the cited material has been printed in the Joint Appendix, the pertinent pages of the Joint Appendix appear in bold-face numerals within brackets immediately following the original citation.

Included among the members of PMA are Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles) ("MTC"), named as respondents in the Commission proceeding (R. 1 [666a-667a]). Marine Terminals Corporation is also before this Court as an intervenor.* These companies are in the business of furnishing stevedoring and terminal services at San Francisco and Long Beach, California (P. 15-17 [681a-685a]; I.D. 4-5 [614a-617a]). Ninety percent of their business is done for common carriers (I.D. 4; 236 [150a]).

Petitioner, the manufacturer of Volkswagen automobiles, is not a member of PMA, nor is it eligible to be. It is, however, a very substantial shipper. In fact, it is the largest dry cargo shipper on contract carriers to the West coast (LD. 3 [613a-614a]; 276 [165a], 237-238 [150a-151a]), importing by far the greatest number of automobiles passing through the Pacific coast ports (183 [136a], 236-237 [150a-151a]). Cars arriving at San Francisco and Long Beach, California, by chartered vessel, as well as some coming by common carrier, are discharged by MTC (202-204 [137a-139a]). At other ports, other PMA members render similar services in connection with Volkswagen vehicles (291 [169a-170a]; Exs. 46-48 [538a-587a]).

The Mechanization and Modernization Fund

This proceeding has its genesis in a heavy financial liability assumed by PMA in 1960-1961 as the price for more efficient operations on the waterfront (R. 2 [668a-669a]; LD. 7-8 [618a-620a]; Ex. 1B [262a-278a]). In return for concessions made by the International Longshoremen's and Warehousemen's Union ("Union" or "ILWU") regarding the introduction and maintenance of labor saving machinery, PMA promised to raise twenty-nine million dollars for a "Mechanization and Modernization

* Leave to intervene here was not sought by Marine Terminals Corporation (of Los Angeles).

Fund" ("Mech Fund" or "Fund") to be used in cushioning the effects of higher productivity upon longshoremen and marine clerks (R. 2 [668a-669a]; I.D. 6-7 [617a-619a]; Ex. 1B, pp. 6-7 [269a-272a]).

These arrangements between PMA and the Union supply the background for this case, but are not in issue here. Petitioner has repeatedly expressed the view that they represent a most praiseworthy achievement (7-8).

It is the inequitable way in which PMA is collecting the money it needs for the Fund that gives rise to the present controversy. Upon the insistence of PMA, the Union has no voice in how this is done (I.D. 7-8 [618a-620a]; Ex. 1C, pp. 7-8 [283a-285a]; 379-386 [205a-211a]). The decision as to how this sum should be raised is entirely PMA's (R. 2 [668a-669a]).

When the Union and PMA reached an agreement in October, 1960 on the size of the Fund, subject to ratification by their respective memberships, PMA already had in hand one and a half million dollars of the total required (R. 2 [668a-669a]; 362-368 [193a-198a]). It had collected this sum, as evidence of its good faith, while negotiations were proceeding. PMA undertook to accumulate the balance, twenty-seven and a half million dollars, at the rate of \$5,000,000 a year for five and a half years (R. 2 [668a-669a]; I.D. 7 [618a-619a]; Ex. 1B, p. 6 [269a-270a]).

The Cooperative Working Arrangement for Raising \$5,000,000 Annually

As soon as PMA had tentatively agreed with the Union on the size of the Fund, a committee was appointed to advise how the \$5,000,000 needed annually should be collected (R. 2 [668a-669a]; I.D. 7-8 [618a-620a]; 88-89 [87a-88a]; 393-394 [215a-217a]).

As this committee advised PMA when it submitted its report on January 4, 1961, it had decided against raising

the balance of the Fund through an assessment tied to manhours, in the same manner as the initial amount had been collected (Ex. 5A, pp. 2-4 [467a-470a]). It also had considered and rejected relating benefits to burdens by requiring contributions based upon improvements in long-shore productivity (Ex. 5A, pp. 1-2 [468a-468a]). Instead, it deliberately adopted what it described as "admittedly • • • a rough-and-ready way to divide the cost" (Ex. 5A, p. 4 [469a-470a]). What it suggested was that there be paid into PMA a fixed dollar-and-cents amount on every ton of cargo "manifested for loading or discharging at Pacific Coast ports" (Ex. 5A, p. 5 [470a-471a]). It proposed that the rate on bulk cargo be only one-fifth that on general cargo (*ibid.*).

By recommending that the tax be based on the cargo "manifested," the committee made the ship's manifest dispositive as to whether weight or measurement tons should be used in computing the assessment on any particular commodity (109 [100a], 112-113 [102a-103a]). In the maritime industry, both weight and measurement tons are in common use. Different ships will show different tonnages for different commodities on their manifest, depending upon which they employ.*

The committee conceded in its report the possibility of "some few inequities in special instances arising from the proposed plan" (Ex. 5A, p. 7 [472a-473a]). It recommended annual review "to prevent the continuation of any such inequities that may develop" (Ex. 5A, p. 9 [474a]).

Although PMA's Board of Directors, when it met on January 6, 1961, disapproved the favored treatment the committee recommended for bulk cargo and was in favor

* The type of assessment recommended by the committee was not new to PMA (R. 2 [668a-669a]). A portion of the dues PMA collects annually for its own operations are raised in a similar fashion (Ex. 3, pp. 35-36 [403a-405a]). The committee explained that it was adopting the same formula for the Mech Fund (I.D. 10-11 [621a-623a]; Ex. 5A, p. 5 [470a-471a]).

of assessing all tonnage equally (Ex. 2P, p. 2 [379a-380a]), PMA's membership voted on January 10, 1961 to put into effect the formula recommended by the committee (R. 2 [668a-669a]; LD. 11 [622a-623a]; Ex. 2 O [372a-377a], Ex. 6 [479a-480a]). Apparently, however, serious doubts continued to exist regarding how the formula would work in practice since the vote was taken "with the understanding that the method of collection will receive continued study and be presented to the Membership again in six months" (Ex. 2 O, pp. 3-4 [375a-377a]). At the same time the membership ratified the collective bargaining agreement calling for the creation of the Mech Fund (Ex. 2 O, p. 4 [376a-377a]).

Representatives of MTC were present at this January 10, 1961 meeting of PMA's membership (Ex. 2 O, p. 2 [374a-375a]). Furthermore, all the members of PMA were sent a notice of the action taken at that meeting, reminding them that they would be bound by the membership's decision under PMA's by-laws unless they resigned within seven days (Ex. 6 [479a-480a], Ex. 3, pp. 24-25 [396a-398a]).

PMA's Board of Directors met on January 16, 1961 to translate the formula for raising the Fund into a specific dollar-and-cents amount (Ex. 2N [369a-372a]; 82 [83a-84a]). Apparently this was done by dividing the amount needed annually, \$5,000,000, by the tonnage which was estimated would be discharged and loaded during the year, making appropriate allowance for the fact that bulk cargo would pay only one-fifth as much as general cargo. The amount of the assessment computed in this fashion came to 27½ cents per ton (Exs. 2N [369a-372a], 35 [521a-523a]).

Disproportionate Burden Imposed on Automobiles

It was immediately evident that this 27½ cents tax based upon tonnage would impose a "discriminatory burden" on automobiles (Ex. 7, p. 1 [481a-482a]). When the PMA

assessment was adopted, VW was paying MTC \$10.45 per vehicle for the entire package of labor and services involved in the stevedoring and terminal handling of its cars (Ex. 7 [481a-485a]; 213-214 [140a-141a]). This same rate was paid irrespective of size or weight (Ex. 7, pp. 2-3 [482a-485a]; 205 [139a], 279). An assessment of 27½ cents per measurement ton represents \$2.35 per vehicle or better than 25 percent of the prior cost (R. 3 [689a-670a]; 179 [135a], 233 [149a], 320 [176a]). This amount far exceeds MTC's profit margin of \$1.00 or less (224-225 [144a-146a]). By contrast, the discharge cost of other general cargo was raised only about 2.2 percent (Ex. 7, p. 1 [481a-482a]). Thus, in terms of the cost of discharge, the PMA tax, if based upon measurement, fell ten times as heavily on automobiles as on all other general cargo.

The same ten to one ratio emerges if the PMA assessment is compared with direct labor costs. In 1960 direct labor cost in discharging Volkswagen vehicles averaged 49 cents per measurement ton. An assessment computed on such tonnage, therefore, increased such cost 56 percent (284 [168a-169a]). On the other hand, in 1962, when the labor savings promised from the Fund were already being experienced, the shoreside wages of all PMA members were approximately \$104,000,000 (285 [169a]). Compared to this figure, the Fund assessment was only five percent (286 [169a]; Ex. 49).

Equally as evident as the disproportionate burden imposed upon Volkswagen automobiles was the fact that no comparable benefits would accrue to this cargo from the labor saving devices permitted by the Mech Fund (Ex. 7, p. 3 [483a-485a], 219-220 [143a-144a], 226-227 [146a-147a]). This is because, as the Commission found, "stevedoring of cars has always been an efficient and economical operation * * * and auto shippers will probably receive only general benefits from the fund plan, such as freedom from strikes or slowdown" (R. 4 [670a-671a]).

When PMA's membership met on January 10, 1961, MTC and the other stevedoring contractors and terminal operators handling Volkswagen vehicles were already aware that the proposed method of assessment heavily burdened automobiles and could not be absorbed by the onshore operators (R. 4 [670a-671a]; 239-241 [151a-153a], 247-248 [155a-156a], 432-433 [240a], 436-438 [241a-242a]). PMA's Board of Directors, on January 16, 1961, were cognizant of discussions regarding changing the assessment for automobiles (Ex. 2N, p. 2 [370a-371a]).

VW promptly protested the "discriminatory burden" imposed upon automobiles (Ex. 7 [481a-485a]). On January 17th an agent for VW wrote PMA with regard to the "overwhelming discrimination [against automobiles] which is implicit in an attempted levy at a level 10 to 15 times greater than that assessed on other general cargo" (Ex. 7, p. 3 [483a-485a]). The letter developed in detail the facts just recited (Ex. 7, [481a-485a]). Among other things, it pointed out that Volkswagen vehicles were often freighted, and therefore manifested, for the purposes of liner shipments on a unit basis; that measurement was irrelevant for stevedoring and terminal handling as evidenced by the identical rate paid for the 7.8 cubic ton sedan and the 11.4 cubic ton "Micro-bus"; that automobiles were freighted and manifested in the intercoastal trade on a weight basis only; that wharfage on automobiles was according to weight rather than measurement; and that no substantial savings could be expected in the handling of automobiles.

But neither this letter nor subsequent protests effected any reduction in the burden of the Mech Fund on automobiles. A telegram from the San Francisco Port Authority (Ex. 8) and continued objections to the treatment of automobiles, including some pressed by the Army with regard to its vehicles (116-121 [105a-108a], 148 [120a-121a], 319 [175a]; Exs. 16-18, 23-26 [510a-514a], 30, 35 [521a-523a]), led nowhere. On each of the many occasions for reconsideration provided by VW's refusal to accede to this

unfair system of taxation, PMA reaffirmed its decision to grant no relief (Exs. 10 [487a-492a], 20 [498a-502a], 22 [507a-508a], 27, 31 [517a-518a], 2F, pp. 5-6 [354a-355a], 2H, p. 4 [356a-357a], 2L, p. 17 [366a-367a]).

In fact, subsequent to VW's well documented protest, automobiles became the subject of even more deliberate discrimination. To understand why this occurred and why PMA perpetuated and exacerbated an assessment inequitable on its face, it is necessary to understand something about the structure of PMA and the actual collection of the Mech Fund.

How the Self-Interest of PMA's Membership Is Served by the Cooperative Working Arrangement

What must be kept in mind is that PMA's obligation is to raise a specific lump sum of money each year—\$5,000,000. This means that any reduction in the assessment with respect to one commodity must necessarily be compensated for by an increase in that on another. Thus, for example, when the rate of tax on scrap metal was reduced from the general cargo rate to the bulk cargo rate, all other cargo left in the higher category had to pay 27½ cents per ton, rather than 26¾ cents (Ex. 2N, p. 2 [370a-371a]). Conversely, any disproportionate yield from particular traffic, like automobiles, lowers the amount that has to be exacted from the remainder (Ex. 28 [515a]). Thus, if automobiles contribute more than their share, other commodities benefit proportionately (172-173 [133a-134a]).

On all cargo loaded or discharged on behalf of PMA's carrier members, these members bear the cost of the Fund payments; on cargo arriving by chartered vessel or by non-PMA lines, the burden of the tax falls elsewhere. This can be seen clearly if the mechanics by which the assessments are reported and paid are reviewed.

On cargo loaded or discharged on behalf of carrier members of PMA, the amount due is reported and ultimately paid by the carrier. Each month PMA's member steamship companies report to PMA the total tonnage loaded or discharged for them the previous month by each contracting stevedore with which they did business (Ex. 55 [588a-593a]; 63 [76a-77a]). This tonnage is multiplied by the tax rate fixed in the PMA formula to arrive at the total amount due (Ex. 55 [588a-593a]; 430-432 [239a-240a]).

Originally, it was intended that the member steamship companies would forward this amount directly to PMA (64 [77a]; Ex. 35 [519a-523a]). However, this was subsequently changed to ensure the deductibility of the contributions for income tax purposes (64 [77a]; Ex. 2L, pp. 18-19 [367a-368a], Ex. 55 [588a-593a]). Instead, the stevedore or terminal operator handling the cargo for the steamship company remits the amount due on receiving a copy of the steamship company's report to PMA (Ex. 55 [588a-593a]). But at the very meeting of PMA's Board of Directors on March 9, 1961 at which this procedure was approved for tax reasons, it was also agreed "that the steamship companies will send a check to the contracting stevedore at the same time as the advice notice is sent" (Ex. 2L, p. 19 [367a-368a]). It was also suggested "that the check should be drawn jointly to the stevedore and to the Fund" (*ibid.*). Accordingly, PMA's carrier members are requested to "advance to their contractors sufficient monies with the remittance advice in order that the contractors may make payments promptly to the Association" (Ex. 55, p. 2 [589a-591a]). If, for any reason, the stevedore or terminal operator defaults in payment, the steamship company is liable (Ex. 1C, pp. 15-16 [289a-290a], Ex. 2C, p. 4).

The only cargo on which the carrier members of PMA do not pay the Mech Fund assessments is cargo loaded or discharged for non-PMA members. This includes cargo carried by shipping lines not belonging to PMA or

arriving by chartered vessel or, although transported by a PMA member, not done so on berth terms as, apparently, in the case of the Army. On all such cargo the report to PMA is made by the stevedore or terminal operator belonging to PMA discharging such cargo (Ex. 55, p. 2 [589a-591a]). If he is to be reimbursed for the assessments he pays PMA on such cargo, he must look outside PMA (Ex. 21, p. 2 [504a-505a]).

Under PMA's by-laws its carrier membership have a majority on its Board of Directors (Ex. 3, pp. 5-9 [382a-386a]; 58-59 [74a-75a]) and the controlling vote at membership meetings (Ex. 3, pp. 11-12 [387a-388a]; Exs. 39-41 [525a-538a], 46-48 [538a-587a]).* In addition, carriers furnished all the members of both the PMA committee appointed to consider how the cost of the Mech Fund should be allocated and the committee subsequently formed to pass upon any inequities resulting from that method (60 [75a-76a], 94-96 [89a-92a]; Exs. 46 [538a-553a], 47 [554a-570a]). Neither committee included a single independent terminal operator or stevedoring contractor (*ibid.*).

The decision regarding how heavily automobiles should contribute to the Mech Fund, therefore, always lay with the shipping lines which control PMA. That decision was, in fact, a decision as to how heavily Volkswagen automobiles should be assessed since this make constitutes by far the largest number of automobiles imported through United States Pacific coast ports (183 [136a], 236-237 [150a-151a]). Volkswagen automobiles, in the main, are not transported to this country by PMA carriers. Over 70 percent arrive by chartered vessel (158 [125a]; Ex. 52) and many of the remainder are carried by liners not members of PMA

* The Examiner's finding "that there is no substantial evidence in the record to support Volkswagen's contention" that liner interests dominate PMA (I.D. 32 n. 42 [648a]) is irreconcilable with PMA's own by-laws, which are in evidence, and forms the subject of a specific exception by VW on which the Commission made no ruling.

(273-274 [164a-165a]; Exs. 39-41 [525a-538a]). Accordingly, it has at all times been to the financial advantage of PMA's carrier members, with whom the decision always lay, not only to do nothing to reduce the assessment on automobiles, but, if possible, to increase the contribution this traffic made to the Mech Fund.

This has led to an unequal struggle culminating in this proceeding, between VW, on the one hand, to ameliorate the burden placed on automobiles, and PMA, on the other, to collect the maximum amount possible on such cargo.

VW's Unsuccessful Efforts to Reduce PMA's Assessments on Its Vehicles

The Mech Fund assessments on Volkswagen automobiles would have been in line with that placed on other general cargo if levied on the basis of weight tonnage rather than measurement. On the average, the weight tonnage of Volkswagen automobiles shipped to the United States is one-tenth their measurement tonnage (L.D. 13 [625a-626a]; 281 [166a-167a]).

Initially it was thought that assessments could be placed "on a weight-ton basis by the device of having the ocean freight calculated on that basis" (Ex. 32 [519a-521a]; 240 [152a]). Such alternative seemed feasible under the plan of assessment voted by PMA's membership on January 10, 1961 to use manifested tonnage in calculating the assessment because, as the Commission found, there "is no uniform way of manifesting automobiles" (R. 3 [669a-670a]; 276-277 [165a-166a], 322-324 [176a-177a]). Due to the volume of Volkswagen vehicles moving into Pacific coast ports, the vessels transporting them treat them in terms of unit rather than in terms of weight or measurement (Ex. 12 [493a-494a]; 276-277 [165a-166a], 317 [175a]; L.D. 16 [629a-630a]). Thus, there seemed to be no impedi-

ment to having these vehicles manifested by weight, rather than measurement.

When PMA's Board of Directors met on January 16, 1961 they closed the door on this possibility, however, by directing that "tonnage declarations *** are to be made in exactly the same manner as manifested and reported during the year 1959, and any changed method of manifesting from that date will not be valid for reporting tonnages covering the fund contributions" (Ex. 2N, p. 3 [371a]). A representative of MTC was present at this meeting (Ex. 2N, p. 1 [369a-370a]) and PMA's Board of Directors knew that automobiles had been "the subject of discussion" (Ex. 2N, p. 2 [370a-371a]; 419 [233a-234a]). As the Board's minutes indicate, at the forefront of its consciousness was the fact that any reduction in the amount collected on automobiles would result in an increase in the rate on other general cargo (Ex. 2N, p. 2 [370a-371a]).

Subsequent inquiry by PMA's vice president, shortly after the meeting (83-86 [84a-86a]), disclosed that even predicated on the assessments on 1959 practices would not necessarily result in all Volkswagen automobiles being assessed on a measurement ton basis (e.g., Ex. 12 [493a-494a]). Thereupon, a letter was sent to all companies discharging Volkswagen automobiles, instructing them that "Future reports on automobiles for PMA dues and Modernization and Improvement Fund purposes are to be made on a measurement basis" (Ex. 36 [524a-525a]). When the committee appointed by PMA to review questions arising in connection with the collection of the Fund (95 [90a-91a]) met in February, 1961, it confirmed that automobiles were to be the subject of a special rule. In their case, uniquely, the manifest is not to be decisive (R. 10 [676a-677a]). "Regardless how manifested," automobiles are to be taxed on a measurement ton basis (126-129 [110a-113a]; Exs. 42, 43, 44). No accident of manifesting is to be permitted to allow any Volkswagen automobiles to escape PMA's unfair and arbitrary tax.

The considerations underlying PMA's treatment of VW emerge vividly in a memorandum (Ex. 28 [515a]) prepared when "the reduction of assessments on automobiles to a lesser amount" was being considered (Ex. 29 [516a]). As this memorandum shows, by assessing automobiles on a measurement ton basis the Fund expected to receive \$287,444 annually from automobiles alone. The same memorandum points out that an adjustment reducing the burden carried by automobiles by approximately half would mean that \$127,625 would have to be made up in some other manner and that, if an across-the-board rate adjustment were made, an estimated 2.6 percent increase would be required (Ex. 28 [515a]). Any such increase would, of course, have had to be borne in the main by the steamship lines. No such adjustment, therefore, was ever forthcoming.*

Changes in the PMA Formula

While it was against the self-interest of PMA's membership to make any change in the impact of their "rough-and-ready" formula on automobiles, or on vehicles shipped by the Army, which likewise protested without success (Ex. 10, p. 2 [488a-490a]), the same was not true as to other cargo. In consequence, over the years that formula lost its original simplicity and assumed the complexity of

* Unquestionably, the self-interest which motivated PMA's treatment of petitioner's cargo would emerge even more clearly if PMA had produced all of its relevant records in obedience to the subpoena served on it, as petitioner thought it had at the time of the hearings. That it did not do so now appears plainly from the internal evidence of the documents that were produced. For example, PMA has at no time made available a copy of the report submitted to its Board of Directors, in accordance with the vote of its membership, by the committee charged with supervisory responsibility over the Mech Fund regarding the first six months' experience with the operation of the assessment formula (Ex. 2 I, p. 3 [360a-361a]). Many more instances could be given where reference is made to what appear to be highly significant written materials not brought forward by PMA.

governmental regulation, including the subsidizing of economically depressed businesses.

The first change came virtually simultaneously with the adoption of the formula when scrap metal was made subject to the bulk cargo rate (Ex. 2N, p. 2 [370a-371a], Ex. 35 [521a-523a]). The tax rate on coastwise shipments was cut in half in March, 1961 (Exs. 10 [487a-492a], 43, 44, 2L, pp. 16-17 [366a-367a]). The change was recommended to PMA's Board of Directors on the ground that coastwise carriage is "a very marginal business economically" (Ex. 10, p. 2 [488a-490a]). Subsequently, one branch of this trade, the movement of logs and lumber, was singled out for even more favorable treatment. By two resolutions of the Board of Directors, assessments on these commodities were further reduced retroactively to 2½ cents per ton (R. 3 [669a-670a]; Ex. 2F, pp. 4-5 [354a-355a], Ex. 2D, p. 4 [348a-349a]). An internal PMA memorandum explains that the original assessments "would [have] put the coastwise lumber industry out of business" (Ex. 21, p. 1 [502a-504a]). In consequence, lumber contributes only one-tenth as much to the Fund as does all general cargo which, in turn, as pointed out earlier, is burdened only one-tenth as heavily as automobiles.

In December, 1961 it was decided to raise part of the Mech Fund through an assessment of 15 cents an hour on the manhours worked by ships' clerks (R. 3 [669a-670a]; 104-106 [96a-98a]). This reduced the assessment on general cargo for the Mech Fund to 24½ cents and on bulk cargo to five cents (Exs. 56 [594a-595a], 57). However, in the case of the former, this saving was wiped out by a new four cents assessment for a Mech Fund for supervisory employees, raising the total to 28½ cents per ton (Ex. 56 [594a-595a]).

The documents produced by PMA indicate that competitive considerations were a factor in the changes in the treatment of particular commodities (Ex. 10, pp. 2-3 [488a-491a], Ex. 21, p. 2 [504a-505a], Ex. 2L, p. 17 [366a-367a];

132-135 [114a-117a]). Such considerations also entered into PMA's successful efforts to secure the Union's co-operation in seeing that the non-PMA members "pay contributions to the mechanization fund in exactly the same manner as member companies" (Ex. 21, p. 1 [502a-504a], Ex. 10, pp. 3-4 [490a-492a], Ex. 19, Ex. 2L, p. 17 [366a-367a]). The final agreement with the Union so provided (Ex. 1C, p. 8 [284a-285a]; I.D. 18 [631a-632a]).

The Mech Fund assessment went into effect on January 16, 1961 (Ex. 35 [521a-523a]). In the next two years about \$10,000,000 was collected (I.D. 24 [638a-639a]). The only cargo on which these assessments have not been paid are the Volkswagen vehicles arriving at the Pacific coast ports by chartered vessel (I.D. 19 [632a-633a]; 192-193 [136a-137a]; Ex. 2C, p. 2). They have not been paid because petitioner has made it clear that it will not recognize or reimburse anyone for the cost of these assessments (Exs. 9 [486a-487a], 13 [495a-496a], 14 [496a-497a], 22 [507a-509a], 27, 32 [519a-521a], 2L, pp. 4-5 [361a-363a]). Assessments on these vehicles shipped by petitioner by common carrier have, however, been paid (192 [136a], 253 [157a], 267 [163a]).

Efforts by PMA to Collect the Assessments on Volkswagen Automobiles

Except for the assessments for the Mech Fund, VW has reimbursed MTC for all PMA assessments relating to Volkswagen automobiles. MTC have collected their PMA dues (260-261 [160a-161a]), the original manhour assessment for the Mech Fund (244 [154a]) and the subsequent assessment based on ships' clerks' hours (264 [161a-162a], 301 [170a]).

However, when MTC applied to VW for payment of the Mech Fund assessment, VW advised MTC that not only would it not pay it if billed separately but that if it were included in the "commodity rate" it would be broken

out and deducted by VW before payment (245 [154a]; Ex. 9 [486a-487a]).

That the assessments were too large to absorb was common talk among MTC and the other terminal operators and stevedoring contractors at the PMA meetings on January 10 and January 16, 1961 (239-241 [151a-153a], 248 [156a], 437-438 [241a-242a]). The best MTC offered VW was to absorb an amount equal to what the assessment would have been if computed on a weight basis (246 [154a-155a]). When the assessments were imposed it "was contemplated," as MTC's attorneys wrote, that they "as added stevedoring or terminal costs, could be added to the charges of the stevedore or terminal companies" (Ex. 32 [519a-521a]).

Uncertain how to proceed in the face of petitioner's refusal to recognize the PMA assessment, MTC wrote PMA on March 1, 1961, asking for advice on "what stand we can take in demanding payment of this assessment" (Ex. 9 [486a-487a]). Another PMA stevedore also turned to PMA for guidance concerning collection from a non-PMA carrier of the Volkswagen assessments (Exs. 11 [492a-493a], 12 [493a-494a]). MTC reported to PMA that it had informed VW's representatives that "we at Marine Terminals Corporation are merely following out the instructions set forth by the Board of Directors of the Pacific Maritime Association and therefore are considered only a collection agency in this matter" (Ex. 9 [486a-487a]).

PMA requested MTC to take no action to collect the money until the formal agreement with the Union (which did not take place until November 15, 1961) was signed (Exs. 13 [495a-496a], 14 [496a-497a]. See also Ex. 21, p. 2 [504a-505a]). One month after that occurred, PMA's Board of Directors took up what their minutes denominated as "the problem of collecting funds from Volkswagen due the Mechanization Fund" (Ex. 2H, p. 4 [356a-357a]). MTC requested PMA's Board of Directors for authority "to bring suit against Volkswagen for the

monies due" and for "both legal and moral support" in connection therewith (*ibid.*). Both requests were granted. Simultaneously the Board exempted MTC and the other PMA members discharging Volkswagen automobiles from any penalties because of delinquency in the payment of assessments (Ex. 2H, p. 5 [357a]).

Further consideration by PMA led to shifts in tactics (Ex. 2F, p. 6 [355a]). And when litigation finally started on August 14, 1962 it took the form of a suit by PMA against MTC and the other onshore operators engaged in discharging Volkswagen automobiles. MTC impleaded VW which secured a stay of these judicial proceedings pending determination by the Commission whether the Shipping Act had been violated (R. 5 [671a-672a]).

The Proceedings Before the Commission

In January, 1963 VW filed the complaint against MTC which forms the subject of this appeal. It challenged the underlying agreements among members of PMA and the acts taken by MTC in executing these agreements as violating sections 15, 16 and 17 of the Act.

In brief, section 15 requires that various kinds of agreements among common carriers by water and operators of related enterprises, or what the Act terms "other person[s]," be filed with the Commission and approved by it before they may lawfully be effectuated. Section 16 prohibits anyone subject to the Act from giving any undue or unreasonable preference or advantage to any person or description of traffic and conversely from discriminating against any person or description of traffic. Section 17 imposes an affirmative requirement to "establish, observe and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing or delivering of property."

Both MTC and PMA, which intervened, contested the jurisdiction of the Commission. MTC maintained that

they were not subject to the Act as "other persons[s]." PMA argued that the exclusive jurisdiction given the National Labor Relations Board over collective bargaining ousted the Commission from "jurisdiction to regulate, interfere with, or even consider, the activities of PMA and its members which VW attacks."

Neither MTC nor PMA seriously challenged VW's position that the Mech Fund assessments burdened Volkswagen automobiles disproportionately, both in relationship to benefits and to other cargo.* The Commission describes MTC as having conceded "that the method of assessment against automobiles on a tonnage basis is unfair" (R. 3 [669a-670]). PMA's president, called as a witness by it, avoided giving a direct answer to the question as to "whether a measurement ton assessment on automobiles at the same rate per ton as applied to other commodities, excluding bulk commodities, is an equitable basis for assessment" (421 [235a]; see also 416 [231a-232a]).

The Examiner resolved both jurisdictional issues in favor of VW. He sustained VW's contention that MTC were "other person[s]" subject to the Shipping Act (I.D. 4-5 [614a-617a], 26-27 [640a-643a]). He found no merit in PMA's claim that the Commission lacked jurisdiction because of the alleged connection with a collective bargaining agreement (I.D. 32-33 [648a-650a]).

* PMA offered no evidence to controvert VW's contention that the assessment increased the cost of discharge for Volkswagen vehicles by 26 percent while raising the cost of discharge of general cargo only approximately 2.2 percent (Ex. 7, p. 1 [481a-482a]). Instead, it introduced two tables to show that there are other cargo items for which the PMA tax computed on a measurement basis substantially exceeds a tax computed on a weight basis (Exs. 53, 53A). Even this elaborate demonstration of a self-evident proposition [which is the only piece of evidence on the issue mentioned by the Examiner (I.D. 15 [627a-629a])] reinforces the discrimination against automobiles since in no instance, as the Commission found, is the difference in result depending upon whether measurement or weight is used as great for any commodity as it is for automobiles (R. 10 [676a-677a]).

On the merits, the Examiner held that the actions of the membership of PMA in entering into and carrying out the agreements as to the method of collection and payment of the contributions to the Fund "constituted . . . a co-operative working arrangement among common carriers and other persons subject to the Act" (I.D. 25 [639a-640a]). Nevertheless, he found no violation of section 15 in the failure to file such agreement because, as he interpreted the statute's language, this agreement fell outside its purview (I.D. 29-32 [644a-649a]). He also absolved MTC of breaching sections 16 and 17 (I.D. 34-37 [650a-655a]).

Both VW and MTC filed exceptions. On October 13, 1965, the Commission, with two members dissenting, dismissed the complaint. Its report contains only a brief synopsis of the facts (R. 2-6 [668a-673a]). Omitted from this summary are many of the most critical facts established by uncontested evidence, including the fact that VW's vehicles are taxed ten times as heavily as other general cargo, although they receive no greater benefits. It is unclear whether the Commission's recital is intended to correct, supplement or replace the far more extensive findings made by the Examiner. Furthermore, nowhere does the Commission explicitly rule on the parties' exceptions.

While agreeing with the Examiner's conclusions, the Commission apparently parts company with his rationale. The majority deems section 15 inapplicable to PMA's agreements regarding the Mech Fund because it interprets that section to apply "only to those agreements involving practices which affect that competition which in the absence of the agreement would exist between the parties when dealing with the shipping or travelling public or their representatives" (R. 7 [673a-674a]). In the view of the majority, PMA's agreements do not satisfy these requirements; Commissioner Hearn, however, thought them met (H. 61-65 [722a-728a]).

Commissioner Patterson agreed neither with the interpretation given to the statute nor the result reached by the majority in applying the statute so interpreted to the facts of this case (P. 32-49 [698a-713a]). He viewed the agreements involved as subject to section 15 (P. 11 [677a-678a]).

Like the Examiner, the majority found no violation of section 16 because petitioner had failed to show that cargo competitive with its automobiles had been preferred (R. 9 [675a-676a]). As for section 17, the Commission found no "unreasonable practice" because "there is no statutory requirement that all users of a facility be assessed equally" (R. 10 [676a-677a]). From these conclusions, Commissioner Patterson was the sole dissenter (P. 11 [677a-678a], 49-60 [712a-722a]).

For the reasons set forth at greater length in the argument which follows, we believe that the Commission has emasculated the Act and has licensed exactly the conduct the statute was enacted to prevent: concerted action among carriers and persons dominated by them to impose unreasonable and excessive charges upon a shipper and user of competitive transportation.

Statute Involved

The relevant provisions of the Shipping Act of 1916, as amended, are set out in the Appendix to this Brief.

Statement of Points

1. The Commission erred in holding that the Shipping Act of 1916 was not violated by collective action under unapproved agreements which burden the discharge of Volkswagen vehicles with an assessment ten times that exacted from other general cargo and far exceeding any benefits expected to inure to automobiles from the Mech Fund.

2. The Commission's conclusion that the cooperative working arrangement among the members of PMA, in-

cluding common carriers, MTC and other persons subject to the Shipping Act of 1916, is not within the purview of section 15 denies the statutory language its plain and intended meaning. Moreover, even under the restrictive interpretation the Commission placed upon the statutory language, its conclusion is erroneous.

3. In concluding that MTC, together with other persons, are not discriminating against petitioner and its cargo in violation of section 16 of the Shipping Act of 1916 by putting the PMA arrangement into effect, the Commission erroneously deemed dispositive the fact that no competitive cargo was shown to be preferred.

4. The holding of the Commission that MTC are not violating section 17 of the Shipping Act of 1916 fails to take into consideration all the practices engaged in by MTC in connection with the PMA agreements and applies an erroneous standard to the single practice evaluated, a standard which would license the very discrimination that section 17 prohibits.

5. The Commission's conclusions do not support the order dismissing petitioner's complaint and are not themselves supported by adequate findings, substantial evidence in the record or rational bases in the law.

Summary of Argument

I. The Shipping Act of 1916 is intended to bring under governmental scrutiny and surveillance all collective action by ocean carriers and related maritime enterprises. Among the agreements which section 15 requires to be filed and approved by a governmental agency before being put into execution are any between covered persons which fix or regulate transportation fares, control competition, or provide for a "cooperative working arrangement." All, or nearly all, of the members of PMA, including MTC, are common carriers and other persons subject to the Act. The agreements among the membership of PMA regarding col-

lection of the Mech Fund fall squarely into several of the categories of agreements described in section 15. Their arbitrary allocation of a common cost is a price-fixing device. By establishing an artificial cost in connection with the discharge of cargo, they control competition and regulate charges for terminal services. On their face, they constitute a "cooperative working arrangement" among persons subject to the Act. Through these agreements, PMA exercises the power normally reserved to government to tax and to subsidize depressed trades. While not denying that the agreements among the membership of PMA respecting the Mech Fund are literally covered by the statutory language, the Commission puts them outside its scope on the ground that the legislative history shows that the statute applies "only to those agreements involving practices which affect that competition" which otherwise "would exist between the parties when dealing with the shipping or travelling public." In refusing to give the statutory language its plain and normal meaning, the Commission is frustrating, not carrying out, the legislative intent.

II. A section 15 agreement was present here, even under the Commission's mistaken interpretation of the law. The Commission misunderstood the character of the PMA arrangements when it described the record as devoid of evidence of "an additional agreement by the PMA membership to pass on all or a portion of the assessments to the carriers or shippers served by the terminal operators." So far as the carriers belonging to PMA are concerned, their obligation to reimburse the operators for the cost of the assessments is an integral part of the scheme. As for shippers like VW there was an "understanding" among PMA's members that the assessments would be passed on.

III. The Commission regarded petitioner's contention that MTC had violated section 16 by discriminating against it and its cargo to be foreclosed by the absence of any

showing that cargo competitive with automobiles had been preferred. As both the Commission and the courts, however, have recognized, no such showing is necessary where arbitrarily varying charges are made for identical benefits. Since Volkswagen automobiles receive no greater benefit from the Mech Fund than do other cargo, burdening them ten times as heavily is flagrant discrimination.

IV. A. In connection with the Mech Fund assessments, MTC have established, observed and enforced a number of practices regarding the "receiving, handling, storing or delivering of property." Only one such practice was tested by the Commission for consistency with section 17 of the Shipping Act. Ignored were the practices implicit in, first, MTC's adoption of a method of allocating a common cost and second, accepting the obligation to make, and making, regular monthly payments in accordance with such allocation. Just as a system of cost accounting is a "practice" within the meaning of section 17, so is any other method of allocating and recognizing a particular cost.

B. Each and every practice involved in the execution by MTC, and the other members of PMA, of their agreements regarding collection of the Mech Fund implements an illegal price-fixing agreement and breaches the obligation which section 17 places upon MTC to establish fair and reasonable practices. The Commission deemed that section satisfied if "substantial benefits" were received from the Mech Fund by Volkswagen automobiles, regardless of how disproportionately such cargo is burdened in return for such benefits, in both absolute and relative terms. Such an interpretation of the statute licenses exactly the type of discrimination which it was intended to prevent. Furthermore, if, as the Commission suggests, a different rule applies where a deliberate design exists to burden one user of a service more than another, the facts of this case bring it within the exception.

Argument

POINT I

In concluding that PMA's assessments involved no agreement subject to section 15, the Commission devitalized the Shipping Act.

A

In enacting the Shipping Act it was the intention of Congress to subject collective action in the maritime industry to Governmental scrutiny.

It is indisputable that the common carriers, contracting stevedores and terminal operators comprising the membership of PMA are using the power which they enjoy by virtue of the fact that they act in concert pursuant to agreement in such a way as to raise the cost to VW of discharging its automobiles on the Pacific coast. They have entered into a cooperative working arrangement by which they have shifted to VW's automobiles a disproportionate share of a common cost. They have used the power given them by their agreement to make petitioner subsidize the cargo they carry.

The legislative purpose in enacting the Shipping Act was to protect individual shippers and commodities against such an arbitrary exercise of power by combinations of carriers and other persons and to do so by subjecting all concerted action to scrutiny by a regulatory agency. The Commission, by refusing to give to the language in which Congress expressed its purpose its plain and unambiguous meaning, now puts outside the regulatory scheme exactly the type of abuse it was intended to prevent.

The broad and comprehensive language employed in section 15 is not the result of accident. It was deliberately chosen to remedy the abuses arising from collective action in the shipping industry, which an exhaustive study made

by the House Merchant Marine and Fisheries Committee had revealed. The results of this study are summarized in the Alexander Report,* recognized as the source of the Shipping Act. *Federal Maritime Board v. Isbrandtsen Co.*, 356 U.S. 481, 490 (1958). Not the least of the abuses revealed was that retaliatory action was taken against shippers employing the services of carriers not part of the anticompetitive combination. Alexander Report, p. 417.

In the opinion of the Committee the disadvantages and abuses disclosed by its inquiry were inherent in a system in which monopoly power was being exercised by private combinations without any legal control. The Committee's report noted;

"[S]teamship companies, through private arrangements, have secured for themselves monopolistic powers as effective in many instances as though they were statutory. * * * They exercise their powers as private combinations and are apt to abuse the same unless brought under effective government control." *Id.* at p. 418.

As the Committee made plain, its purpose was "to protect the shipper against any unreasonable high rate which the combination lines may have within their power, by virtue of their agreements and conference arrangements, arbitrarily to impose in the absence of government supervision and control." *Id.* at pp. 420-421.

Because the hearings of the Committee had developed that discrimination did not necessarily occur only during the carriage by water but also during the performance of connected services, the Act was deliberately drafted to embrace the latter as well. In successfully fighting off an amendment designed to narrow the coverage of the statute,

* Proceedings of the House Committee on the Merchant Marine and Fisheries in the Investigation of Shipping Combinations under H. Res. 587, 63d Cong., 2d Sess. (1914).

Representative Alexander explained that for an agency to effectually regulate water carriers and prevent "unjust discrimination between shippers" "it must also have supervision of all those incidental facilities connected with the main carriers." 53 Cong. Rec. 8276 (1916).

The Shipping Act is admirably designed to accomplish the legislative purpose. Its first section defines broadly the persons subject to its provisions so as to embrace not only common carriers by water, but suppliers of ancillary services used by the carriers as weapons to penalize and punish shippers employing competitive transportation (46 U.S.C., section 801). Other sections prohibit specific abuses which the hearings had revealed. *Inter alia*, section 14 bars any carrier by water from discriminating against any shipper, directly or indirectly, because "such shipper has patronized any other carrier * * * or for any other reason" (46 U.S.C., section 812). Section 16 forbids discriminatory acts (46 U.S.C., section 815) and section 17, unfair practices (46 U.S.C., section 816). These explicit regulatory sections are complemented by section 15, drawn to ensure that all collective action taken in the maritime industry is subjected to government scrutiny (46 U.S.C., section 814). This section requires the filing and approval of every agreement, by which is meant as well any "understanding," falling into one of seven categories, among persons subject to the Act. Included is any agreement "fixing or regulating transportation rates or fares; * * * controlling, regulating, preventing or destroying competition; * * * or in any manner providing for an exclusive, preferential or cooperative working arrangement."

Giving the statutory language its plain meaning, the agreements here involved are squarely covered.

B

The PMA agreements relating to the Fund are among persons subject to the Act.

Insofar as the applicability of section 15 to the agreements among the membership of PMA for collecting the Mech Fund is concerned, MTC's exact status under the Shipping Act is of no moment since other parties thereto are common carriers by water. Such agreements, therefore, are necessarily among persons subject to the Shipping Act, whatever view is taken of MTC.

Actually, however, MTC are as squarely covered by the Act as is any other party to these agreements. The facts supporting this conclusion are fully set forth by Commissioner Patterson in his dissent (P. 15-17 [681a-685a], 35-37 [701a-703a]). MTC are terminal operators engaged in furnishing terminal facilities to common carriers by water (I.D. 26-27 [640a-643a]). Their pier and storage facilities are exactly the type referred to in the Act. *California v. United States*, 320 U.S. 577 (1944).

Conference agreements into which MTC have entered with persons engaged in similar operations have been filed under section 15 (242-243 [153a]). Finally, MTC have been held, in earlier proceedings, to be "other persons subject to this chapter." *Status of Carloaders and Unloaders*, 2 U.S.M.C. 761, 767 (1946); *Carloading at Southern California Ports (Agreement No. 7576)*, 2 U.S.M.C. 784 (1946). Cf., *Investigation of Certain Storage Practices*, 6 F.M.B. 301 (1961).

C

PMA's agreements fix transportation rates, regulate competition, and provide for a cooperative working arrangement.

For all the reasons given by the two dissenting Commissioners (R. 34-49 [700a-713a], 61-65 [722a-728a]), the agreements respecting the Mech Fund among PMA's members are embraced by section 15.

To start with, they are agreements "fixing or regulating transportation rates or fares." "Transportation rates" embrace terminal and stevedoring charges. *In the Matter of Agreement No. 8905, Port of Seattle-Alaska Steamship Co.*, 7 F.M.C. 792 (1964); *Agreements No. 8225 and 8225-1*, 5 F.M.B. 648 (1959), *aff'd, Greater Baton Rouge Port Comm'n v. United States*, 287 F. 2d 86 (5th Cir. 1961), *cert. denied*, 368 U.S. 985 (1962). See also *Status of Carloaders and Unloaders, supra*, 2 U.S.M.C. 761 (1946); *In the Matter of Wharfage Charges & Practices at Boston, Mass.*, 2 U.S.M.C. 245 (1940). It is part of these agreements that any PMA member discharging or loading cargo for another PMA member shall be paid by the latter whatever sum is necessary to cover the PMA assessment. As among PMA members, therefore, these internal arrangements clearly fix and regulate transportation rates.

Equally, these agreements regulate transportation rates for non-PMA members, like VW, irrespective of any contractual obligation to pass them on, since they result in a floor below which no rate can go. The PMA agreements have created a new cost element, equal to about 25 or 30 percent of the rate previously charged for discharge of Volkswagen vehicles. The rates for these services must, of necessity, be increased *pro tanto* if the agreement is valid. Thus, the effect is to "regulate" transportation rates.

PMA's agreements are also brought within section 15 by the subdivision requiring the filing of any agreement "controlling, regulating, preventing or destroying competition." They burden competition among the carrier members of PMA for the services of the terminal and stevedoring members, and among the latter for the patronage of the former, since they inhibit the pricing freedom that would otherwise prevail.

Turning to petitioner's cargo, when MTC agreed with other stevedores and terminal operators to recognize a

uniform and artificial cost in connection with the discharge of automobiles, they regulated their competition with one another for such business. Each one by this arrangement disabled himself from charging a price which did not include the agreed upon amount. By committing themselves to pay PMA approximately \$2.35 for every vehicle they handled, the membership of PMA curbed their ability to compete by lowering their prices.

That the membership of PMA were well aware of the anticompetitive nature of their arrangements is shown by their concern that outsiders in competition with them be compelled to spread the cost of the Mech Fund in exactly the same fashion. Repeatedly, it was emphasized that this was necessary for competitive reasons. (See pp. 14-15, *infra*.)*

Finally, as the Examiner found and as is indisputable, the agreements among the membership of PMA provide for a "cooperative working arrangement." They establish a method whereby through collective action the sum of \$29,000,000 is to be raised over a period of five and one-half years.

D

In interpreting section 15 to exclude PMA's cooperative working arrangement, the Commission has done violence both to the language and purpose of the Act.

With much we have so far said the Commission takes no issue. It is willing to "assume [that] all of the members of PMA are 'other persons' within the meaning of the

* On March 3, 1961 the PMA committee charged with working out the details of the Fund wrote PMA's president that it was "essential that non-members be required to pay a similar assessment for competitive reasons" (Ex. 10, p. 3 [490a-491a]). At a meeting of PMA's Board of Directors held on March 9, 1961, the importance of subjecting all competitors to the same burden was explicitly recognized. The minutes read: "The Chairman stated that W. R. Chamberlin & Co. will be placed in a non-competitive position if non-members of PMA reach a different settlement with the ILWU. The ILWU has been contacted and said they will reach no different agreement with non-members" (Ex. 2L, p. 17 [366a-367a]).

Shipping Act" (R. 7 [673a-674a]). It also concedes that the "literal language of section 15 is broad enough to encompass any 'cooperative working arrangement'" (R. 7 [673a-674a]). It refuses, however, to read the statute as meaning what it says.

Section 15, the Commission says, "was intended by Congress to apply only to those agreements involving practices which affect that competition which in the absence of the agreement would exist between the parties when dealing with the shipping or travelling public, or their representatives" (R. 7 [673a-674a]).

What then becomes of cooperative working arrangements involving persons between whom no competition has ever existed? As, for example, an ocean carrier and a freight forwarder, both of whom are subject to the Act? Under the Commission's formulation such an agreement would never have to be filed. Yet, one of the reasons given by the Supreme Court in *United States v. American Union Transp.*, 327 U.S. 437 (1946), for holding all forwarders to be covered by the Act, not only those affiliated with a common carrier, was that "agreements or understandings . . . between forwarders and carriers may be discriminatory in such a way as to violate the provisions of § 15." 337 U.S. at 447 (emphasis supplied).

How is the Commission's interpretation to be reconciled with section 15's opening language requiring "every common carrier by water, or other persons subject to this chapter" to file a copy "of every agreement with another such carrier or other person subject to this chapter?"

The Commission's rule does not stop, however, with requiring that the agreement be between parties in competition with one another. In addition, the agreement must relate to a specific aspect of the competition between them, that is, competition with reference to the "shipping or travelling public, or their representatives." If terminal opera-

tors, as here, enter into a cooperative working arrangement among themselves affecting their competition for the business of carriers, this is outside the statute. Conversely, arrangements between carriers controlling only their dealings with terminal operators or stevedoring contractors are also excluded. Here, again, the results reached by the Commission are inconsistent with other statutory language. An agreement under section 15 is to be disapproved if it is "unjustly discriminatory or unfair as between carriers, shippers, exporters, importers" (emphasis supplied). But under the Commission's formulation an agreement affecting carriers only, not shippers or exporters or importers, is wholly outside the statute.

If the view of the Commission is accepted, so far as the Shipping Act is concerned, carriers and related enterprises may engage in whatever collective action they like as to every aspect of their business outside their dealings with the shipping or travelling public, subject to no administrative surveillance. It would make no difference in the result reached by the Commission if PMA's members agreed that the assessment to be paid on discharging automobiles was to be \$100 per car, or even \$1,000 per car, rather than \$2.35. According to the Commission, not only would any such agreement be outside the Shipping Act, but MTC would be entirely justified in passing on such an exorbitant charge to VW (R. 9-11 [675a-678a]).

The number of arrangements harmful to the public which the Commission's interpretation would place out of the reach of the Act are almost limitless. They would include an agreement by PMA that any member discharging chartered cargo shall pay dues ten times as high as anyone else, or, an understanding among a group of carriers that they would not do business with any stevedoring or terminal operator handling cargo for competitive companies. A vast variety of anti-competitive arrangements would find

themselves outside what was intended to be a comprehensive scheme of regulation.

It is no answer to say that the Commission would bring these agreements back in under the statute if their consequences were such as "to affect *** competition" for the business of the shipping or travelling public. That a phrase like "affect *** competition" is one of vast elasticity and uncertainty needs no argument. But the Commission itself, applying its own formula to the agreements in issue, has shown how narrowly it construes this language. For a section 15 agreement to exist in this case, the Commission says there would have to be "an additional agreement by the PMA membership to pass on all or a portion of its assessments to the carriers and shippers served by the terminal operators" (R. 9 [675a-676a]). Apparently, it is immaterial how the practical consequences of putting the agreement into effect alter the pre-existing competition. If the Commission deemed such consequences significant, it would have examined the effect of the agreement upon VW, which is part of the shipping public, and not simply looked, as it did, to the terms of the agreement itself. In short, according to the Commission, an agreement "affect[s] *** competition" only when by its terms it directly controls or regulates such competition.

E

None of the authorities cited by the Commission support its strained construction of section 15.

The Commission's reliance upon *Kennedy v. Long Island R. R.*, 211 F. Supp. 478, 489 (S.D.N.Y. 1962), *aff'd*, 319 F. 2d 366 (2d Cir. 1963), *cert. denied*, 375 U. S. 830 (1963), is wholly misplaced. There it was held that an agreement among railroad companies relating to strike insurance was not one providing "for the pooling or division of traffic, or of service, or of gross or net earnings or of any portion thereof" [49 U.S.C., section 5(1)], and, therefore, did

not require the approval of the Interstate Commerce Commission. Not only was the agreement in question radically different from the one with which we are concerned, but very different statutory language was being interpreted.

The broad jurisdiction over "cooperative working arrangements" conferred upon the Commission by section 15 of the Shipping Act and upon the Civil Aeronautics Board by section 412 of the Federal Aviation Act (49 U.S.C., section 1382) has never been given the Interstate Commerce Commission. Thus, how the courts have construed the quite different language of the Interstate Commerce Act in this regard provides no guide for the construction of language "so dissimilar in terms and setting" as section 15. Cf. *United States v. American Union Transp.*, *supra*, 327 U.S. 437, 455 n.19 (1946).

Far more instructive is the interpretation which the Civil Aeronautics Board has placed upon language derived from section 15. That Board has assumed without question that agreements which affect labor-management relations are subject to no different rules than any other if they fall within the literal language of the statute. Cf. *Airlines Negotiating Conference Agreements*, 8 C.A.B. 354 (1947); *Six-Carrier Mutual Aid Pact*, 29 C.A.B. 168 (1959).

The Commission does not clarify why it believes the "legislative history" of the Act to clearly support its construction. Apart from the Alexander Report, the only piece of legislative history cited by the Commission is a letter addressed in 1961 by the then Assistant Attorney General in Charge of the Antitrust Division to a Congressional committee engaged in considering proposed amendments to the Shipping Act (R. 7 n.2 [673a-674a]). This informal communication by someone in the executive branch not charged with any responsibility for the administration of the Shipping Act does not support the use now made of

it and, in any event, scarcely rises to the level of "legislative history."

Nowhere does the Commission explain how it reconciles the standard it now lays down either with the Alexander Report or with the statutory scheme which, as we have already noted, calls for the filing of every agreement between persons subject to the Act, not simply between persons in competition with one another. Examination of the balance of section 15 will disclose a great deal in it wholly at odds with the Commission's formula. If Congress had only been concerned with agreements "controlling, regulating, preventing, or destroying competition," why did it describe six additional categories of agreements which must be filed. Furthermore, if Congress had only been interested in competition for the business of the shipping or travelling public, why did it refer broadly to "competition"? Along the same lines, where can the Commission find in the provision regarding the filing of every agreement relating to transportation rates and fares the authority to exclude charges for the terminal phase of ocean transportation? Finally, how can such exclusion be made compatible with the direction to disapprove any agreement unjustly discriminatory as "between carriers"?

The statute was the product of long and careful consideration. It must be assumed that its language was "selected as a matter of deliberate choice." *Carnation Co. v. Pacific Westbound Conference*, 383 U. S. 213 (1966). The Commission's reading disregards the plain meaning of the words Congress employed, renders much of section 15 superfluous, and is inconsistent with what remains. Every principle of statutory construction, therefore, compels the rejection of this interpretation.

F

The cooperative working arrangement here involved represents the type of abuse of private power which the Shipping Act was designed to end.

The target of the Shipping Act was agreements like those among the members of PMA. A large scale user of transportation competitive with that provided by the PMA membership is being made the victim of discriminatory action through the collective power of the major shipping lines and their subsidiary enterprises. Just as was the case when the House Committee made the investigations which led to the Shipping Act, the vehicle for the discrimination is one of the facilities indispensable to transportation by water, stevedoring and terminal services.

The Commission's construction of section 15 frustrates its legislative design. What is left of the comprehensive scheme of regulation envisaged by that Act if a tax may be imposed upon the discharge of all cargo by persons subject to the Act without advising the Commission of the system of taxation and securing its approval thereof?

To recognize the power in PMA to impose this tax is to recognize its power to destroy VW or any other shipper. Although the money here involved is limited, the authority claimed by PMA is not. If an unpopular item such as automobiles, which provides little revenue for liners, can be assessed one hundred times as much, proportionally, as coastwise lumber, it can also be made subject to a levy one hundred times greater than all other cargo classifications. There is no limiting factor whatsoever if, as PMA contends, its actions are not subject to any Government supervision or control. As PMA's president admitted, the power to determine what assessment particular cargo would carry contained the potential for "abolishing whole segments of the industry" (388 [212a]). It is self evident that in the words of Chief Justice Marshall, "the power to tax involves the power to destroy." *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 431 (1819).

Admonishing against exactly the type of restrictive interpretation which the Commission has adopted in this case, the Supreme Court said in *United States v. American Union Transp.*, *supra*, 327 U. S. 437, 457 (1946):

"Statutes may be emasculated as readily and as much by unauthorized restricted reading as by one unduly expansive. And the wisdom [of particular statutory provisions] * * * is the concern of Congress, not of this Court. We leave the statute as Congress enacted it."

POINT II

Even under the Commission's interpretation of section 15, PMA's agreements are covered.

Even if the Commission's construction of the statute were on sound ground, it would still have erred in concluding that such construction left the cooperative working arrangement outside section 15. As the Commission made plain, it would have found such arrangement within the statute if there were "an additional agreement by the PMA membership to pass on all or a portion of its assessments to the carriers and shippers served by the terminal operators" (R. 9 [675a-676a]).

The Commission misread the record, however, when it characterized it as being devoid of evidence showing the existence of such an additional agreement.

So far as the carriers belonging to PMA are concerned, it was part and parcel of the decision to have terminal operators pay the assessments on the former's cargo, that the carriers would make available the moneys needed for this purpose (Ex. 2L, p. 19 [387a-388a]; Ex. 55, p. 2 [589a-591a]). The terminal operator is only a conduit between the PMA member carrier and PMA. Having the terminal operator pay the assessment is a purely formal arrangement entered into for income tax purposes only.

The situation is somewhat different as to shippers, like VW, which employ terminal operators directly, since such shippers are not members of PMA and, therefore, not parties to the PMA agreements. But while their consent was not obtained to passing on to them the PMA assessments, nevertheless, the "understanding" on which these assessments were voted was that this is what would happen. As MTC's counsel noted on December 10, 1962, in recounting the history of the "Mechanization Fund assessments on Volkswagen autos":

"Effective January 1, 1961 PMA and ILWU entered into a Supplemental Agreement on Mechanization and Modernization, calling for the creation of a special fund for longshoremen. It was left up to PMA to determine how contributions would be made to the Fund. In due course it was determined by PMA that stevedore and terminal companies should contribute to the Fund certain amounts with respect to each ton of cargo handled. *It was contemplated that these assessments, as added stevedoring or terminal costs, could be added to the charges of the stevedore or terminal companies*" (Ex. 32 [519a-522a]). (Emphasis supplied.)

Such passing on necessarily had to be within the contemplation of the parties, because when MTC and the other PMA members voted these assessments they knew that they could not pay them without increasing their charges to petitioner. The assessments were agreed to with this as a silent predicate. There was no need to secure explicit agreement regarding action to which there was no alternative. It followed as surely as night follows day that if MTC paid PMA the agreed upon assessments, more than double the existing margin between costs and receipts, that they would have to secure reimbursement from VW.

All involved knew that the passing on of the PMA assessments to VW was an integral part of PMA's program. Thus, when VW refused reimbursement, PMA made no serious attempt to collect the assessments from MTC nor did it dispute MTC's description of itself as "only a

collection agency" (Ex. 9 [486a-487a]). On the contrary, PMA's treatment of MTC was entirely consistent with that description. If PMA assumed an adversary position to MTC in the District Court, having first agreed that MTC with PMA's support would effect the collection from VW with MTC as plaintiff, it did so only as a matter of legal strategy to create the false impression that the original agreement did not embrace collection of the assessments from VW. But such formal posturing cannot obliterate the underlying realities which are that when MTC and the other members of PMA entered into their cooperative working arrangement they knew that the assessments on the discharge of VW's automobiles would have to be paid ultimately by petitioner; that PMA has never made any serious attempt to collect the assessments on this cargo from MTC; and that MTC has made no payments to PMA on cargo on which VW has refused to recognize any obligation to pay, although it has made all other payments called for by the cooperative working arrangement.

In parallel fashion, the onshore operators discharging Army cargo paid no assessments on such cargo and no penalties were imposed upon them for their delinquency as long as reimbursement was not forthcoming (Ex. 21 [502a-507a], Ex. 2A, Ex. 2C, p. 2, Ex. 2F, p. 4 [354a], Ex. 2H, p. 5 [357a]).

The term "agreement" in section 15 was deliberately defined by Congress as including "understandings, conferences, and other arrangements" (46 U.S.C., section 814). The record permits no doubt that there was present here an "understanding" to pass on the assessments to VW.

The Commission gives a wholly false importance to the fact that MTC in theory was free to absorb the entire amount and, in fact, apparently indicated a willingness to absorb a small portion of the assessment (R. 9 [675a-676a]). As the Commission itself recognizes in describing the type of additional agreement that would have to be present for it to deem section 15 to be involved, all that was required was

one to "pass on all or a portion of" such assessments (*ibid.*) (emphasis supplied). As a practical matter, as both MTC and PMA knew and understood, the amounts charged VW would have to be increased to cover the cost of the assessments. The understanding that this would be done is in no way incompatible with some small latitude in MTC regarding how much they would absorb and how much they would pass on. But that MTC would have to pass on some portion, because of the size of the assessments, was recognized by everybody concerned. Therefore, what was present here was just such an additional agreement as the Commission deems critical, that is, one to pass on a portion of the PMA assessments to VW.

POINT III

The Commission erred in finding no violation of section 16.

Section 16 (46 U.S.C., section 815) in the most comprehensive and sweeping language forbids discrimination between shippers or cargo. It makes it unlawful for any common carrier by water or other person subject to the Act "either alone or in conjunction with any other person, directly or indirectly * * * to subject any particular person, locality or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

As we have shown earlier, MTC are subject to the Shipping Act because they furnish terminal facilities in connection with common carriers by water. All their operations must, therefore, meet the requirements of the statute, including their activities with regard to chartered cargo. *D. L. Piazza Co. v. West Coast Line, Inc.*, 3 F. M. B. 608 (1951).

The method MTC have adopted, in conjunction with the other members of PMA, to allocate the cost of the Mech

Fund among the users of its terminal facilities violates section 16 on its face. Automobiles are discriminated against and logs, lumber, bulk cargo, scrap metal, in fact, all other general cargo, are preferred. MTC's method of allocation distributes a common cost in an admittedly arbitrary fashion without any attempt to relate benefits to burdens. But VW's contention that MTC has violated section 16 has been brushed aside by the Commission on the ground that to sustain its position VW is required to show that cargo in competition with its Volkswagen automobiles has been preferred (R. 9 [675a-676a]).

However, as Commissioner Patterson in his illuminating dissent points out (P. 49-54 [712a-717a]), such a showing is by no means the universal requirement the Commission implies. In fact, the Commission and its predecessors themselves have successfully defended actions they have taken on the ground that they were necessary to prevent discriminatory practices outlawed by section 16 without ever exploring what the impact of such practices were upon competition. *California v. United States, supra*, 320 U.S. 577, 581-582 (1944); *New York Foreign Freight Forwarders & Brokers Ass'n v. Federal Maritime Comm'n*, 337 F. 2d 289 (2d Cir. 1964), cert. denied, 380 U.S. 914 (1965).

In the *Freight Forwarder's* case, where the Commission met the argument in the Second Circuit that competitive injury must be shown to establish a section 16 violation, it called such contention "plainly untenable." Brief for Respondents, p. 30. Defending the finding of such a violation without such evidence, the Commission's brief went on to point out that the Commission's predecessor had "found substantial evidence that * * * shippers [are] charged disguised markups of widely varying amounts on identical services and for no apparent reason. It did not need to find more. Such practices in a regulated industry are, as the Board said, *prima facie* discriminatory and unlawful in the

absence of justification" The cases requiring a competitive relationship were distinguished on the ground that here "the same service is rendered to all shippers, i.e., procurement of insurance, and the commodity being shipped has nothing to do with the reasonableness of the fee exacted for this service" (*Id.*, p. 31, n. 11). Counsel's argument was accepted by the Court.

Similarly, here, the same benefit is being made available to all shippers, i.e., the opportunity to profit from labor savings, and the commodity involved has nothing to do with the reasonableness of the charge exacted for this opportunity. Likewise, widely disproportionate charges are exacted for this same service, whether such charges are deemed a function of the original discharge cost or of existing direct labor cost or considered in absolute terms.

The effect of PMA's agreements, put into execution by MTC, under which automobiles uniquely are taxed according to measurement tons, whatever the manifest shows, and are made to pay the highest rate of tax, coupled with the favored treatment given other cargo, results in automobiles being burdened ten to fifteen times as heavily as other general cargo, and one hundred times as heavily as favored cargo, like logs and lumber. The only conclusion possible on this record is that reached by Commissioner Patterson, "that there has been preference and advantage to traffic other than Complainant's property and disadvantage and prejudice to Complainant's property" (P. 53 [716a-717a]).

POINT IV

The Commission erred in finding no unreasonable practice by MTC in violation of section 17.

A

Section 17 embraces every practice of MTC in execution of the PMA agreement, not solely the inclusion of the PMA tax in their charges to VW.

The conclusion of the majority of the Commission that no violation of section 17 is involved in the adherence by MTC to PMA's arbitrary system of taxation is entirely unjustifiable.

To begin with, the Commission looked at only one of the congeries of practices involved, which is the passing on by MTC of the PMA assessments for the Mech Fund. It disregarded:

- (a) adoption of a method for allocating to such property a common cost, i.e., the Fund; and
- (b) accepting the obligation to make, and making, regular monthly payments to PMA in accordance with such allocation.

MTC's participation as members of PMA in the adoption of a method for allocating the cost of the Fund is by itself a "practice" within the meaning of section 17 and must, therefore, be "just and reasonable" (P. 55-56 [717a-719a]).

These conclusions follow, *a fortiori*, from the decision in *Terminal Rate Structure—Pacific Northwest Ports*, 5 F.M.B. 53 (1956). In that case, the Commission's predecessor held that it had jurisdiction under section 17 to approve or disapprove a particular accounting method of segregating terminal costs and carrying charges and apportioning such costs and charges to the various wharfinger services at Pacific Northwest ports. After pointing out that the

purpose of the proceeding was "to ensure that the regulations and practices of the terminal operators of the Association, as other persons subject to the Shipping Act, 1916 . . . conform to a standard of justice and reasonableness as required in section 17 thereof," the Board overruled as without merit the contention that it was exceeding its authority (5 F.M.B. at 55):

"We believe it captions to assert that a system of cost accounting which may result in assessment of charges against persons not directly benefited by services rendered may not be an unjust and unreasonable practice within the meaning of section 17, or may not be subject to our jurisdiction."

The reasons given for taking jurisdiction over a system of cost accounting apply even more strongly to the subject matter of this proceeding. If the allocation of a cost through mere book entries may be an unjust or unreasonable practice because it "may result in assessment of charges against persons not directly benefited by services rendered," clearly, a system of allocation effected through actual payments qualifies. Where a cost is unfairly allocated through actual payments, rather than mere book entries, the result *must* be the assessment of charges "against persons not directly benefited by services rendered."

But the Commission gave no consideration whatever to the propriety of the practice involved in the adoption by MTC of the method of allocating the Mech Fund decided upon by the membership of PMA. It treated as the only practices before it for evaluation, MTC's act in seeking to pass on to VW the assessment levied by PMA on the discharge of Volkswagen automobiles. And as to the one practice which it did review, the Commission misapplied the statutory standard. Thus, the Commission erred twice over: first, in looking only to the practices involved in MTC's attempt to collect the PMA tax; second, in how it evaluated that practice.

B

Each and every constituent practice involved in the execution of the cooperative working arrangement is unfair and unreasonable.

Viewed singly or together each practice engaged in by MTC in execution of PMA's cooperative working arrangement must be condemned because each is infected by the basic illegality and inequity which characterizes that arrangement.

It is self-evident that a practice which is illegal cannot be considered "just and reasonable." Acts taken in execution of a price-fixing agreement which violates the antitrust laws are illegal. The cooperative working arrangement among the membership of PMA does not enjoy the immunity conferred by section 15 from the Sherman and Clayton Acts. Either, as the Commission held, it is not within the reach of that section, or, if it is, as VW contends, it has not been filed and approved. *Carnation Co. v. Pacific Westbound Conference*, *supra*, 383 U. S. 213 (1966). Tested by the standards of the antitrust laws, PMA's cooperative working arrangement is *per se* illegal. Agreement upon an element of price is price fixing. Accordingly, practices which put that agreement into effect violate section 17 of the Shipping Act.

In addition to being illegal under the antitrust laws, PMA's cooperative working arrangement is inequitable because it distributes a common cost in an unfair and unreasonable fashion.

Inequity was inevitable when PMA failed to give any weight to labor in allocating what it has always insisted is a labor cost and when it decided to use instead the arbitrary yardstick of manifested tonnage. The unfairness of such a yardstick was deliberately aggravated in the case of automobiles by requiring the tax on them uniquely to be based on measurement tonnage rather than manifested tonnage.

The built-in injustice of using an inappropriate yardstick has been compounded by an unequal tax rate. Bulk cargo, scrap metal, coastwise shipments, logs and lumber are all assessed at a lower dollar-and-cents rate per ton than is the cargo shipped by VW. In consequence, each ton of lumber, to take one example, pays only one hundredth of what MTC is seeking to collect from VW, while each ton of bulk cargo pays only one-fifth.*

The agency through which this is being accomplished is MTC. It is MTC which are paying and passing on to liner cargo a disproportionately small share of the Fund, in order to burden chartered cargo with a cost the former cargo should bear. That the Commission has jurisdiction to put a stop to the practices whereby this is being accomplished is indisputable. *California v. United States*, *supra*, 320 U. S. 577, 586 (1944); *D. L. Piazza Co. v. West Coast Line, Inc.*, *supra*, 3 F.M.B. 608 (1951); *California Stevedore & Ballast Co. v. Stockton Port District*, 7 F.M.C. 75 (1962); *In the Matter of Agreement 6210*, 2 U.S.M.C. 166, 170-171 (1939).

To find no violation of section 17 in these facts the Commission was forced to take the position that there need be no relationship between benefits and burdens. It is enough that "substantial benefits" are present. If they are present, then presumably section 17 interposes no obstacle to charging whatever the traffic will bear regardless of what other persons are paying for the same thing.

* Far less egregious discrimination than that present here has been condemned as unjust and unreasonable. *Practices, etc. of San Francisco Bay Area Terminals*, 2 U.S.M.C. 588 (1941), *aff'd sub. nom.*, *California v. United States*, 46 F. Supp. 474 (N. D. Cal. 1942), *aff'd*, 320 U. S. 577 (1944); *Investigation of Certain Storage Practices*, *supra*, 6 F.M.B. 301, 316 (1961); *Storage Practices at Longview, Wash.*, 6 F.M.B. 178, 182-184 (1960); *California Stevedore & Ballast Co. v. Stockton Elevators, Inc.*, Dkt. No. 1000 (Apr. 21, 1964). It is elementary that one cargo cannot be used to subsidize another.

Not only is such an interpretation of section 17 inconsistent with the popular understanding of what the words in that section mean, but it is wholly at odds with the philosophy underlying its past administration. Let us take one of the best known cases involving section 17, *California v. United States, supra*, 320 U. S. 577 (1944). What difference should it have made there that, if wharf storage failed to supply "revenue sufficient to meet the cost of the service, the burden would be shifted to those who paid appellants for other terminal services, such as docking of vessels, loading and unloading, and transportation privileges over and through the terminals?" 320 U. S. at 581-582. Presumably, those paying for the "docking of vessels" and the other services mentioned were receiving "substantial benefits" in return. If that were enough no significance would attach to the fact that they might be overcharged for such benefits.

Or to take another example, if the Commission is right that benefits need not be related to burdens, why the elaborate attention paid to cost accounting in *Terminal Rate Structure—Pacific Northwest Ports, supra*, 5 F.M.B. 53 (1956)!

The case cited by the Commission as supporting the inequitable doctrine which it now enunciates, *Evans Cooperage Co., Inc. v. Board of Comm'rs of the Port of New Orleans*, 6 F.M.B. 415 (1961), in fact looks the other way. In that case a charge for "wharf tollage" was attacked essentially on the ground that the cargo involved received no substantial benefits in return because it never passed over the wharf. Nevertheless, the examiner found that benefits received were "reasonably related" to the charge being made. The Commission's predecessor affirmed, but only after indicating that it was waiving greater precision in equating benefits with burdens because of the examiner's finding that "precise equivalence" was impossible. This expressed preference for an exact correlation between

benefits and burdens is exactly the opposite of a rule which would license whatever burden lies in the power of the seller to impose once some benefits are found.

It is inconceivable that Congress intended section 17 to be so interpreted. That section was placed in the statute to put an end to one of the specific types of abuse which investigation had revealed—unjust discrimination against individual shippers in connection with just such matters as terminal charges. To require no more than that a shipper receive something in exchange for his money, without regard to how disproportionate the charge made is to what others are required to bear, is to render section 17 useless for the purpose for which it was designed.

Perhaps in recognition of this fact, the Commission suggests that it might reach a different result if "the leviers of a charge imposed it in an unequal fashion because of a design deliberately to burden one of the users of its service more than another" (R. 10 [676a-677a]). This suggests that the unreasonableness and unfairness condemned by section 17 is to be determined by subjective intent rather than objective fact. Anyone complaining of a practice as unreasonable and unfair would be faced with a virtually impossible burden of proof regarding the state of mind of the person engaging in the challenged practice.

How difficult it would be to discharge that burden can be judged by the fact that in this case, in the face of the deliberate adoption of a method for taxing automobiles harsher than that employed for any other cargo, the Commission finds no such intent.

The peculiarly onerous burden placed on Volkswagen automobiles is no accident. When it seemed possible that automobiles could escape PMA's inequitable formula by a change in manifesting practices, PMA directed that 1959 manifesting usage control; when it developed that even

during 1959 some automobiles had been deemed weight cargo, PMA ruled that automobiles alone should be taxed as measurement cargo regardless how manifested. This oppressive rule applies only to automobiles and to no other cargo. It was imposed in the face of the fact that PMA was as well aware as VW that its original formula was unfair to this cargo and raised the costs of its discharge ten times as much as it affected that of other cargo.

Nevertheless, the Commission apparently does not think that it has been shown that the leviers of these charges acted pursuant to a design deliberately to burden VW more than anyone else. It reaches this conclusion by concentrating on the state of mind of MTC and by wholly ignoring the fact that MTC is merely the agency through which PMA exercises its collective power. It is not MTC which are the "leviers" of the discriminatory assessments here involved but PMA. And PMA intended exactly what it has accomplished, to transfer to VW's automobiles the financial burden which liner cargo should be carrying.

Under any test, therefore, MTC, by becoming party to what PMA intended, are establishing, observing and enforcing a group of practices which are unjust and unreasonable and which the Commission should have condemned.

Conclusion

MTC and the other members of PMA have violated section 15 of the Shipping Act by failing to file their co-operative working arrangement taxing all stevedoring and terminal operations on the Pacific coast. Sections 16 and 17 of the Act have been breached by putting this arrangement into execution. The Commission erred by concluding otherwise. The order of the Commission should be set aside and the Commission should be compelled to grant petitioner the relief requested in the complaint.

Dated: March, 1966.

Respectfully submitted,

RICHARD A. WHITING
ROBERT J. CORRER
STEPHENS & JOHNSON
Attorneys for Petitioner

WALTER HERZFIELD
CECILIA H. GOTZ
BERNARD J. WALD
HERZFIELD & RUBIN

STANLEY J. MADDEN
PILLSBURY, MADISON & SUTRO
Of Counsel

Appendix

Shipping Act of 1916, as amended, 39 Stat. 728, 46 U. S. C., sections 801, *et seq.*

Section 1, 46 U. S. C., section 801.

When used in this chapter:

• • •

The term "common carrier by water" means a common carrier by water in foreign commerce or a common carrier by water in interstate commerce on the high seas or the Great Lakes on regular routes from port to port.

The term "other person subject to this chapter" means any person not included in the term "common carrier by water," carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.

• • •

Section 15, 46 U. S. C., section 814.

• • •

Every common carrier by water, or other person subject to this chapter, shall file immediately with the Commission a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this chapter, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working ar-

angement. The term "agreement" in this section includes understandings, conferences, and other arrangements.

The Commission shall by order, after notice and hearing, disapprove, cancel or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be in violation of this chapter, and shall approve all other agreements, modifications or cancellations.

• • •

Any agreement and any modification or cancellation of any agreement not approved, or disapproved, by the Commission shall be unlawful, and agreements, modifications, and cancellations shall be lawful only when and as long as approved by the Commission; before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation.

• • •

Section 16, 46 U. S. C., section 815.

• • •

It shall be unlawful for any common carrier by water, or other person subject to this chapter, either alone or in conjunction with any other person, directly or indirectly—

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

• • •

Section 17, 46 U. S. C., section 816.

• • •

Every such carrier and every other person subject to this chapter shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the Board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice.

OFFICE COPY

BRIEF FOR RESPONDENTS

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 19,840

VOLKSWAGENWERK AKTIENGESELLSCHAFT,

Petitioner,

v.

FEDERAL MARITIME COMMISSION and
UNITED STATES OF AMERICA,

Respondents,

PACIFIC MARITIME ASSOCIATION and
MARINE TERMINALS CORPORATION,

Intervenors.

ON PETITION TO REVIEW AN ORDER OF THE
FEDERAL MARITIME COMMISSION

DONALD F. TURNER
Assistant Attorney General

United States Court of Appeals
for the District of Columbia Circuit

IRWIN A. SEIBEL
Attorney

Department of Justice

Washington, D. C.
May 5, 1966

FILED MAY 23 1966

Nathaniel J. Paulson
CLerk

JAMES L. PIMPER
General Counsel

ROBERT N. KATZ
Solicitor

WALTER H. MAYO III
Attorney

Federal Maritime Commission

QUESTIONS PRESENTED

In the opinion of respondents, the questions presented are as follows:

1. Did the Commission err in determining that no agreement subject to section 15 existed between Marine Terminals Corporation (MTC) and other members of Pacific Maritime Association (PMA) with respect to the assessments referred to on pages 2 and 3 of the Commission Report?
2. Did the Commission err in determining that MTC, in connection with the assessments referred to above, did not violate the prohibitions of section 16 First against making or giving undue or unreasonable preference or advantage to any particular person, locality or description of traffic in any respect whatsoever, or against subjecting any particular person, locality or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever?
3. Did the Commission err in determining that MTC, in connection with the assessments referred to above, did not violate the provisions of section 17 requiring the establishment, observance and enforcement of just and reasonable regulations and practices relating to or connected with the receiving, handling, storing or delivering of property?
4. Did the Commission in its Docket No. 1089 comply with the provisions of section 8 of the Administrative Procedure Act (5 U.S.C. 1007)? In particular, did the Commission make findings upon each of the material issues of law and fact presented and did it rule adequately on petitioner's exceptions to the decision of the Hearing Examiner?

5. Do the conclusions of the Commission in the order dismissing petitioner's complaint support its order, and are the conclusions, in turn, supported by adequate findings, substantial evidence in the record and rational bases in the law?

INDEX

	<u>Page</u>
QUESTIONS PRESENTED	i
COUNTERSTATEMENT OF CASE	1
SUMMARY OF ARGUMENT	15
ARGUMENT	16
I. The Commission Correctly Found That The Agreement For Raising The Mech Fund Was Not Subject to Section 15 of The Shipping Act, 1916.	16
II. The Commission Correctly Found No Violation of Section 16 of The Shipping Act, 1916.	21
III. The Commission Correctly Found No Violation of Section 17 of The Shipping Act, 1916.	23
CONCLUSION	25

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>Associated-Banning Co., et al. v. Matson Nav. Co., et al.,</u> <u>5 F.M.B. 336 (1957)</u>	18
<u>D.J. Roach Inc. v. Albany Port District et al.,</u> <u>5 F.M.B. 333, 335</u>	16
<u>*Evans Cooperage Co., Inc. v. Board of Commissioners,</u> <u>6 F.M.B. 415 (1961)</u>	24
<u>Huber Mfg. Co. v. N.V. Stoomvaart Maatschappij "Nederland"</u> <u>4 F.M.B. 343 (1953)</u>	21
<u>Johnson Pickett Rope Co. v. Dollar S.S. Lines et al.,</u> <u>1 U.S.S.B.B. 585 (1936)</u>	21
<u>*Joint Agreement Between Member Lines of the Far East Conference</u> <u>and the Member Lines of the Pacific Westbound Conference,</u> <u>F.M.C. Docket No. 872, decided July 28, 1965</u>	18
<u>*Kennedy v. Long Island Rail Road Company,</u> <u>319 F.2d 366 (1963)</u>	19
<u>Mitsui Steamship Co. v. Anglo Canadian Shipping Co.,</u> <u>5 F.M.B. 74 (1956)</u>	18
<u>*New York Foreign Freight Forwarders and Brokers Assn. v.</u> <u>Federal Maritime Commission, 337 F.2d 289 (2nd Cir. 1964)</u> <u>cert. den. 380 U.S. 914 (1965)</u>	22
<u>*Pacific Coast Port Equalization Rule, 7 F.M.C. 623 (1963)</u> <u>aff'd sub nom. American Export & Isbrandtsen L. v.</u> <u>Federal Maritime Com'n, 334 F.2d 185 (9th Cir. 1964)</u>	18
<u>Philadelphia Television Broadcasting Co. v. Federal</u> <u>Communication Commission, decided March 28, 1966 (D. C. Cir.</u> <u>No. 19,577)</u>	21
<u>The Paraffine Co.'s, Inc. v. Amer.-Hawaiian S.S. Co., et al.,</u> <u>1 U.S.M.C. 628 (1936)</u>	21
<u>*U. S. Nav. Co. v. Cunard S.S. Co., 284 U.S. 474 (1932)</u>	19
 <u>*Cases principally relied upon.</u>	

TABLE OF AUTHORITIES (cont.)

<u>Statutes</u>	<u>Page</u>
Section 15, Shipping Act, 1916 (46 U.S.C. 814).	1, 12-19
Section 16, Shipping Act, 1916 (46 U.S.C. 815).	12-15, 21-23
Section 17, Shipping Act, 1916 (46 U.S.C. 816).	12-14, 16, 23-25
<u>Miscellaneous</u>	
Report on Steamship Agreements and Affiliations in the American Foreign and Domestic Trade, H.R. Doc. 805, 63rd Cong., 2d Sess., 415 (1914).	17

COUNTERSTATEMENT OF THE CASE

Petitioner seeks review under the Review Act of 1950, 5 U.S.C. 1031, et seq., of an order of the Federal Maritime Commission issued in the Commission's Docket No. 1089, Volkswagenwerk Aktiengesellschaft v. Marine Terminals Corporation, et al., dismissing petitioner's complaint. The Commission's order was entered October 13, 1965, and the petition to review was filed on December 10, 1965.

Petitioner is a German corporation which manufactures Volkswagen automobiles. Petitioner ships its automobiles to ports on the United States Pacific Coast by means of common carrier and chartered (contract) vessels. During the year 1962, approximately 70 percent of petitioner's shipment of automobiles to the Pacific Coast were shipped on chartered vessels, and the remaining 30 percent were shipped via common carriers (I.D. 3).

Marine Terminals Corporation and Marine Terminals Corporation (of Los Angeles) (hereinafter referred to simply as MTC) were respondents in the Commission proceeding. Marine Terminals Corporation is an intervenor before this Court. MTC operates ocean terminals and performs stevedoring services at San Francisco and Long Beach. The overwhelming portion of MTC's business is performed for common carriers; the remainder for contract carriers (I.D. 4). Both MTC and MTC of Los Angeles are members of carloaders' associations whose agreements have been filed with and approved by the Federal Maritime Commission, pursuant to section 15 of the Shipping Act, 1916.

Pacific Maritime Association (hereinafter simply PMA), an intervenor in the Commission proceeding and before this Court, is a nonprofit corporation organized in 1949 for the purpose of negotiating and administering labor contracts with labor unions, on behalf of its membership (I.D. 5). Common and contract carriers, marine terminal operators, and stevedore contractors are eligible for membership in PMA; shippers as such are not eligible for membership. Collective bargaining between PMA and the labor unions is subject to the National Labor Relations Act and to the jurisdiction of the National Labor Relations Board, pursuant to 29 U.S.C. 141, et seq. Insofar as this case is concerned, collective bargaining takes place between PMA on the one hand and the International Longshoremen's and Warehousemen's Union (hereinafter ILWU) on the other hand, and this bargaining between the two parties deals with the work of longshoremen and marine clerks.

The dues and assessments of PMA are determined by a Board of Directors, the members of which are selected from the membership of PMA as divided into eight groups, each group having an identity of interest. Among the assessments levied by the Board of Directors have been cargo dues which are computed by utilizing (1) "each ton of cargo loaded or discharged at U. S. Pacific Coast ports by or for members or for non-members; and (2) the man hours performed by employees of the members under the terms of the ILWU agreements." (I.D. 5).

The history of the Commission proceeding goes back to 1957 when negotiations between PMA and the ILWU as to work-saving devices in connection with stevedoring at Pacific Coast ports first took place. At that

time PMA desired the opportunity to introduce work-saving devices where appropriate and to be free from strikes and slowdowns. The ILWU wanted assurances from PMA that workers would share in the monetary benefits realized from such work-saving devices, that there would be no acceleration of productivity demanded from individual workers, and finally that there would be no unsafe conditions created as a result of the introduction of labor-saving devices.

In August of 1959 PMA agreed to accumulate a fund of approximately \$1,500,000 for the benefit of its employees, and at the same time the ILWU agreed to a further study of mechanization which would be completed not later than June of 1960. On October 18, 1960, the parties signed a "Memorandum of Agreement on Mechanization and Modernization." This agreement set up a "mechanization and modernization fund" (hereinafter simply "the fund") of \$29,000,000, which sum was to be raised over a period of time to extend to July 1, 1966, on which date the agreement would expire. By the terms of the agreement, the members of PMA were to accumulate the \$29,000,000 at the rate of \$5,000,000 each year with \$2,500,000 being collected for the period January 1, to June 30, 1966. Added to that accumulation would be the \$1,500,000 already collected by PMA as a result of the August 1959 agreement.

As PMA's membership was responsible for the accumulation of the fund, the ILWU agreed to allow PMA solely to determine how the fund would be accumulated. In January of 1961, the Board of Directors and

the membership of PMA approved the adoption of a majority report of a "Work Improvement Fund Committee" which had been appointed by the President of PMA in November of 1960, and at the same time the membership ratified the Memorandum of Agreement entered into between PMA and the ILWU. Except as the facts of this case necessarily include mention of the Memorandum of Agreement, it is not directly involved in this proceeding. No party has attacked the agreement or the purposes thereof. On the contrary, petitioner admits that it supports the purposes of the agreement (Pet. Br. 4).

What is at issue in this proceeding is the method approved by PMA for raising the fund. As stated above, the method was adopted by PMA's membership in January of 1961. The resolution of the meeting reads in part as follows:

It was regularly moved and seconded that the Majority recommendation of the Committee appointed to propose a method for collection of the Fund, calling for a tonnage formula with bulk cargoes at one-fifth the general cargo rate, be adopted, with the understanding that the method of collection will receive continued study and be presented to the Membership again in six months.

The Chairman explained the three recommendations which had been made:

1. Majority Report (on which the motion is based)
26 3/4¢ on general cargo
5 1/2¢ on bulk
2. Minority Report
10¢ a ton
12¢ per manhour
3. Board of Directors
20¢ a ton

It was further agreed that the Board of Directors would examine and determine the definition of bulk cargoes.

At this time a secret ballot was taken and the vote was polled as follows:

246 yes; 74 no; 21 withheld; 67 absent

Motion carried by a majority of the total voting strength of the Association membership. (Exh. 2o, pp. 3-4).

In essence, the majority report which was adopted by the membership of PMA provided that members would be assessed on the basis of tonnage carried or handled, with bulk cargo being assessed at one-fifth the rate for general cargo. Shortly after the meeting of PMA's membership, the Board of Directors altered the assessment for general cargo to 27 1/2¢ per ton carried or handled. The assessments were to work as follows: Each member of PMA would remit to PMA as trustee for the fund established pursuant to the agreement between PMA and the ILWU an amount equal to 27 1/2¢ per ton of cargo carried or handled, a ton constituting for the purposes of the assessment 2000 pounds weight, or 40 cubic feet measurement. One thousand board feet of lumber also constituted a ton. These measurements are the ordinary measurements used in manifesting cargo for carriage by sea. The special category of bulk cargo was to be assessed at 5 1/2¢ per ton carried or handled.

PMA further provided that the declarations of tonnage by its members were to be based on and made in "the same manner as" declarations made to PMA for the purposes of assessing dues for the year 1959 (Exh. 2n, p. 3). The declaration form used for dues purposes was to be continued for the purposes of reporting tonnages for fund assessments.

At this point the real gravamen of petitioner's complaint becomes apparent. MTC, for dues purposes, had reported the handling of Volkswagen automobiles on a measurement ton basis, in conformity with generally accepted practice. That is, MTC's dues to PMA were assessed on the basis of measurement tons of cargo carried—40 cubic feet of cargo constituting a measurement ton. A Volkswagen automobile on this basis measures 8.7 measurement tons, whereas if weight ton were utilized, it would measure only 0.9 tons (I.D. 13). An assessment for the fund based on measurement tons at 27 1/2¢ per ton equalled \$2.35; the same assessment based on weight tons equalled \$.25 (I.D. 13).

The assessment formula on automobiles was prescribed by PMA by a letter to its membership dated January 16, 1958, for use in determining tonnage dues. Subsequent to the establishment of the method for determining assessments for the fund, PMA sent out a circular letter to its members stating that it had become apparent that some members were not adhering to the measurement ton formula in reporting automobiles carried or handled:

Since the institution of the Modernization and Improvement Fund, it has come to our attention a number of contracting stevedores and steamship companies are still reporting automobiles for tonnage dues purposes on a weight basis instead of measurement. The theory of dues and assessments is predicated on the fact member companies shall pay on exactly the same basis thereby assuring all companies each is paying its fair share of a dues or assessment program.

Any steamship company or contracting stevedore who has not been reporting and paying dues on automobiles on a measurement basis since January 1958 should immediately complete a revised tonnage declaration form indicating by vessel and date the tonnage on automobiles reported on a weight basis, the tonnage which should have been reported on a measurement basis, and the difference which is assessable at 2-1/2 cents per ton. This statement should be completed as promptly as possible and sent to the Association with a check to cover this amount of additional dues involved. Future reports on automobiles for PMA dues and Modernization and Improvement Fund purposes are to be made on a measurement basis. Exh. 36, emphasis supplied.

Thus, PMA unequivocally required its members to report automobiles based on measurement tons as opposed to any other method of computation. That the assessment on a Volkswagen automobile based on measurement tons results in a figure approximately ten times that which would result if weight tons were used cannot be denied, and respondents do not contest petitioner's statement to that effect. In fact, the Commission's Hearing Examiner so found.(I.D. 13).

As stated above, petitioner ships a greater percentage of its automobiles which are destined for the Pacific Coast via chartered (contract) vessels rather than by common carriers. In 1962, only about 30 percent were shipped via common carriers. The discharge rate, or charges for handling one of petitioner's automobiles from the ship to the dock, was negotiated between petitioner and MTC, and the resulting figure was called the "unit price." (I.D. 9). As the Examiner found, this price was a combination of actual costs, overhead, and profit, as well as the tonnage dues which MTC was required to remit to PMA. Petitioner knew

that the tonnage dues were assessed on its automobiles on the basis of measurement tons, and no protest was made by petitioner as to this method of assessment (I.D. 10). As regards petitioner's automobiles which were carried via common carrier, the stevedoring charges were based on measurement tons and tonnage dues were paid to PMA accordingly.

Thus, a more complete picture of petitioner's cause of complaint and the facts and circumstances surrounding the assessments for the fund emerges. PMA's members had been paying dues to PMA, which dues were assessed on automobiles carried or handled based on the measurement tons of each automobile. MTC paid dues on this basis, or at least there is nothing in the record to indicate that it deviated from that formula, from 1958 until 1961. PMA established the method of assessments for the fund on the same basis as tonnage dues were assessed, at which time petitioner felt aggrieved. Thence ensued the following events during which petitioner attempted to seek relief from the formula employed by PMA in collecting and making assessments for the fund.

MTC soon realized that it would be unable to absorb the fund assessments on automobiles as a cost of doing business, and it necessarily decided that the assessments would have to be passed on to the shippers, petitioner included. Petitioner protested the method of making fund assessments, although it continued to use MTC's facilities. Petitioner wrote to PMA on January 17, 1961, stating in part:

In conclusion, we are compelled to request immediate action by the Pacific Maritime Association to remove the threat of tonnage assessment on a measurement basis against the importation of unboxed foreign automobiles. Failing timely and affirmative action by your Association, we shall have no recourse but to seek legal order to remove this overwhelming discrimination which is implicit in an attempted levy at a level 10 to 15 times greater than assessed on other general cargo. Furthermore, you may expect legal action against the Pacific Maritime Association for recovery of damages suffered by Volkswagenwerk, A.G. and the distributors of these autos on the Pacific Coast, resulting from such restraint of trade. (Exh. 7, p. 3).

On March 1, 1961, MTC informed PMA that petitioner was refusing to pay the assessment based as it was on measurement tons. MTC informed PMA that petitioner had informed its agents "that if our rates are renegotiated and the assessment is placed in the rate, they will continue to deduct the 27 1/2¢ per measurement ton." (Exh. 9). At the time petitioner refused to pay the fund assessment, MTC likewise ceased remitting the assessments on petitioner's automobiles to PMA. See Exhs. 13 and 14. At that time, however, PMA agreed not to press MTC for payment of the assessments, pending a discussion of various means of legal redress.

Evidence in the record shows that petitioner was the only shipper of automobiles who protested the assessments for the fund (I.D. 19). One common carrier of Volkswagen automobiles, Wallenius Lines, at first paid the assessment but then upon learning that petitioner was refusing to pay the assessments, it likewise refused to pay them. On January 25, 1963, the agents for Wallenius Line informed the California Stevedore &

Ballast Co. that it would not pay the assessments on unboxed automobiles, but it guaranteed "that these charges will be paid to you as soon as a determination has been made that these charges are legal." (Exh. 33, p. 2). Companies which were not members of PMA paid assessments at the same rate as members, under the terms of the supplemental agreement (Exh. 1c, p. 8).

The Commission's Hearing Examiner found that, starting about 1961, stevedoring contractors "were able to increase the rate of production of their gang hour. This was attributable to improvements on the Volkswagen vessels that facilitated unloading of the automobiles." (I.D. 20). The Examiner further found that officials of the contractors determined that benefits, such as freedom from strikes or slowdowns, had been derived from the funding plan.

Petitioner's objections to the assessment formula were reiterated on several occasions. See, e.g. Exh. 26. On December 12, 1961, the funding committee of PMA met and decided to reject petitioner's proposal that "unboxed autos be assessed on the basis upon which they are normally handled between factory, loading terminal, ship's hold, discharge terminal, distributor, dealer, retail buyer—namely, per unit." (Exh. 26, p. 2). On December 13, 1961, the Board of Directors of PMA met, and the following excerpt is taken from the minutes of that meeting:

The Chairman read a communication from the Funding Committee covering the problem of collecting funds from Volkswagen due to the Mechanization Fund. After discussion it was decided that the method of contribution

originally established for this type of cargo should be maintained. Marine Terminals requested that a letter covering this discussion be forwarded to them and that they be authorized to bring suit against Volkswagen for the monies due. Marine Terminals also requested that PMA give both legal and moral support on the Volkswagen suit. It was agreed that PMA will give such support and will participate in any legal action taken and that the matter will be turned over to PMA Legal Counsel. Exh. 2h, p. 4.

At various times thereafter the question of instituting legal proceedings to force payment of the assessments was considered. Exh. 29. On March 27, 1962, the Coast Steering Committee of PMA directed that a letter be sent to MTC advising that the "Funding Committee had again reconsidered the Mechanization Fund assessment on unboxed automobiles and did not recommend any change in the present assessment." (Exh. 2f, pp. 5-6). On July 3, 1962, the Board of Directors of PMA approved the recommendation of the Coast Steering Committee that PMA counsel be authorized to institute action against members if the members were in default on their assessments. Exh. 2f, p. 6. Previously, PMA had advised MTC that legal action should be taken to obtain payment of the assessments from petitioner (Exh. 31). Ultimately, however, it was PMA who on August 14, 1962, instituted suit against MTC in the United States District Court for the Northern District of California to recover the assessments due. MTC, on September 13, 1962, impleaded petitioner, and the District Court on November 29, 1962, stayed proceedings on petitioner's request to enable petitioner to institute proceedings before the Federal Maritime Commission. The following issues were to be submitted to the Commission for its determination:

1. Whether the assessments claimed from Volkswagen are being claimed pursuant to an agreement or understanding which is required to be filed with and approved by the Federal Maritime Commission under Section 15 of the Shipping Act, 1916, as amended, 46 U.S.C. 814 (1961), before it is lawful to take any action thereunder, which agreement has not been so filed and approved.

2. Whether the assessments claimed from Volkswagen result in subjecting the automobile cargoes of Volkswagen to undue or unreasonable prejudice or disadvantage in violation of Section 16 of the Shipping Act, 1916, as amended, 46 U.S.C. 815 (1961).

3. Whether the assessments claimed from Volkswagen constitute an unjust and unreasonable practice in violation of Section 17 of the Shipping Act, 1916, as amended, 46 U.S.C. 816 (1961). (R. 5-6).

On January 29, 1963, petitioner filed its complaint with the Commission. Hearings were held before Examiner Benjamin A. Theeman, a Federal Maritime Commission Hearing Examiner, and on June 5, 1964, the Examiner issued his Initial Decision. The Examiner found, inter alia, that MTC were persons subject to the Shipping Act, and that the agreement entered into between MTC and other PMA members was a cooperative working arrangement. The Examiner found that the agreement consisted of two items: (1) the report of the Work Improvement Fund Committee dated January 4, 1961 (Exh. 5a) and (2) the resolution of PMA's membership dated January 10, 1961 (Exh. 2o). The Examiner further found:

A careful reading of these documents show that they deal solely with "the appropriate method of dividing the costs" of the Mech Fund among the PMA members. Nothing contained in the Committee report or the minutes of the January 10, 1961 meeting indicates that the Committee or the PMA membership in ratifying the majority report had gone or had intended to go beyond that specified area. II. 22-23.

The Examiner went on to find, however, that the cooperative working arrangement between MTC and the other members of PMA was not such an arrangement required by section 15 of the Shipping Act, 1916, to be filed with and approved by the Federal Maritime Commission. Thus, the arrangement was not one which fixed or regulated transportation rates or fares; gave or received special rates, accommodations, or other special privileges or advantages; controlled, regulated, prevented, or destroyed competition; pooled or apportioned earnings, losses, or traffic; allotted ports or restricted or otherwise regulated the number and character of sailings between ports; or limited or regulated in any way the volume or character of freight or passenger traffic to be carried. The arrangement, however, did, the Examiner thought, come literally within the seventh category of agreements required by section 15 to be filed; that is, the arrangement did provide for an exclusive, preferential or cooperative working arrangement. The Examiner concluded that the arrangement did not pertain to ocean transportation, and that it was, therefore, not within the purview of the Shipping Act.

Additionally, the Examiner found it unnecessary to determine whether the cooperative working arrangement was part of a collective bargaining agreement or whether the arrangement violated the antitrust laws. I.D. 33-34. The Examiner also found no violations of sections 16 and 17 of the Shipping Act.

After exceptions and oral argument, the Commission issued a report on October 13, 1965. The majority of the Commission affirmed the

Examiner's finding that the arrangement between NTC and other members of PMA was not subject to the Shipping Act, 1916, even assuming "all of the members of PMA are 'other persons' within the meaning of the Shipping Act, 1916," (R. 7). The Commission found that the agreement among the membership of PMA establishing the method of assessing for the collection of the fund "does not fall within the confines of section 15 as standing by itself, it has no legal impact upon outsiders." The Commission further found that an additional agreement among the membership of PMA to pass on all or part of the assessments for the fund to carriers or shippers had not been established. R. 8-9.

In finding no additional agreement, the Commission stated:

The record is devoid of evidence showing the existence of such an additional agreement. The record at most shows that some stevedores expressed the opinion that it might be necessary to pass on the assessment in the stevedoring rate to their customers. That these opinions were the basis for an agreement as to the manner of assessing their customers is denied by statements of witnesses for both PMA and respondents. Such conclusion is further vitiated by the actions of respondent and perhaps other terminal operators, who were willing to absorb a part of the assessment. R. 9.

The majority of the Commission found itself in agreement with the Examiner that there were no violations of sections 16 and 17 of the Shipping Act. Commissioner Patterson dissented from the majority report in all respects; Commissioner Hearn agreed with the majority that there were no violations of sections 16 and 17 of the Shipping Act, but he disagreed with the majority on the issue of whether there was an agreement subject

to section 15. He would have required PMA to file its cooperative working arrangement with the Commission and seek approval.

Petitioner thereupon filed its petition to review within the sixty-day period prescribed by the Review Act of 1950, and PMA and MTC were granted leave to intervene.

SUMMARY OF ARGUMENT

The agreement among the members of the Pacific Maritime Association (PMA) establishing the mechanization and modernization fund and providing for assessments for the fund from members on the same basis as members were assessed for PMA dues was a cooperative working arrangement, but the agreement was not one required by section 15 of the Shipping Act, 1916, to be filed with and approved by the Commission. As the agreement did not affect the competitive relationships of the PMA members and did not pertain to ocean transportation, the legislative history of section 15 of the Shipping Act and a construction of like provisions of the Interstate Commerce Act leads to the conclusion that the agreement is not within the purview of the Shipping Act.

The Commission correctly found that Marine Terminals Corporation (MTC) did not violate section 16 of the Shipping Act, 1916, by discriminating against petitioner's automobiles. In view of past Commission precedent that a competitive relationship between shippers must be shown to sustain an allegation of a violation of section 16 and petitioner could

not make such a showing as there was no other cargo classification in competition with automobiles, petitioner's allegation could not stand.

Finally, the Commission correctly found that MTC did not violate section 17 of the Shipping Act, 1916, by its use of the measurement ton rather than the weight ton for making assessments on automobiles. Since MTC had taken all reasonable steps to have the assessment altered and had even offered to absorb some of the assessment, the Commission's finding that the inclusion of the assessment by MTC in its charges to petitioner was a reasonable business practice was, under the circumstances, proper.

ARGUMENT

I. THE COMMISSION CORRECTLY FOUND THAT THE AGREEMENT FOR RAISING THE MECH FUND WAS NOT SUBJECT TO SECTION 15 OF THE SHIPPING ACT, 1916.

The Commission found that the agreement among the members of PMA for raising the fund was not subject to section 15 of the Shipping Act, 1916, even though that agreement could be termed a "cooperative working arrangement" within the meaning of the statute. Even if section 15 could literally encompass any such arrangement, the Commission found,

the legislative history is clear that the statute was intended by Congress to apply only to those agreements involving practices which affect that competition which in the absence of the agreement would exist between the parties when dealing with the shipping or travelling public or their representatives. D.J. Roach Inc. v. Albany Port District et al., 5 F.M.B. 333, 335. (R. 7, footnote omitted).

In other words, the Commission said, the arrangement among the members of P.M. was not among "the type of agreements which affect competition by the parties in vying to serve outsiders" (Ibid.)

An examination of the legislative history bears out the Commission's finding. The Alexander Committee Report of 1914 treated only those written agreements, conference arrangements or gentlemen's understandings, which have for their principal purpose the regulation of competition through either (1) the fixing or regulating of rates, (2) the apportionment of traffic by allotting the ports of sailing, restricting the number of sailings, or limiting the volume of freight which certain lines may carry, (3) the pooling of earnings from all or a portion of the traffic, or (4) meeting the competition of non-conference lines. Report on Steamship Agreements and Affiliations in the American Foreign and Domestic Trade, H.R. Doc. 805, 63rd Cong., 2d Sess., 415 (1914)

It is clear that the agreement among the members of P.M. does not come within the Alexander Committee's definition of those agreements which were to be regulated or prohibited.

The Examiner found that some limitation must be imposed on the requirements for filing agreements with the Commission:

It would be idle conjecture to imagine what might be filed with the Commission, if the requirement in section 15 that every agreement between common carriers and other persons subject to the act providing for a cooperative working arrangement were taken literally. (I.D. 29).

This is certainly not to say that the Commission has been loath to find agreements subject to the statute where the facts of a given case put them squarely within the intent of section 15. But, the Commission has

realized that limitations are inherent in a sensible reading of the statute.

In 1927, the U. S. Shipping Board, one of the Commission's predecessor agencies, limited the language of section 15 as follows:

As contended by conference representatives in this proceeding, a too literal interpretation of the word "every" to include routine actions between the carriers under conference agreements would result in delays and inconvenience to both carriers and shippers. Ex Parte b, Section 15 Inquiry, 1 U.S.S.B 121, at 125 (1927).

The Commission and its predecessors have elaborated on what constitutes a section 15 agreement. In Mitsui Steamship Co. v. Anglo Canadian Shipping Co., 5 F.M.B. 74 (1956), the Federal Maritime Board found that a "new conference interpretation" was subject to the filing and approval requirements of section 15. In Associated-Banning Co., et al. v. Matson Nav. Co., et al., 5 F.M.B. 336 (1957), the Board held that an agreement evidencing a general intent to enter into certain arrangements was not a complete agreement under the Act.

In 1963, the Commission in Pacific Coast Port Equalization Rule, 7 F.M.C. 623, aff'd sub nom. American Export & Isbrandtsen L. v. Federal Maritime Com'n, 334 F.2d 185 (9th Cir. 1964), found that a rule providing for port equalization was a new arrangement, not sanctioned by an approved agreement, which was required to be filed with and approved by the Commission. And, finally, in its Docket No. 872, Joint Agreement Between Member Lines of the Far East Conference and the Member Lines of the Pacific Westbound Conference, July 28, 1965, the Commission found

that rate-making procedures not fairly embraced within an approved agreement required separate approval pursuant to section 15. Thus, the Commission has not been slow to make findings that certain types of agreements are subject to section 15 and are required to be filed with the Commission.

The courts have construed the provisions of the Shipping Act, 1916, in the light of the provisions of the Interstate Commerce Act, upon which the Shipping Act was closely modeled. See U.S. Nav. Co. v. Cunard S.S. Co., 284 U.S. 474 (1932). Section 15 of the Shipping Act parallels Section 5(1) of the Interstate Commerce Act, and the traditional interpretation of Section 5(1) of the Interstate Commerce Act is that it does not encompass agreements affecting labor-management relationships except where the competitive relationships of the parties are affected. In Kennedy v. Long Island Rail Road Company, 319 F.2d 366 (1963), the Second Circuit held that a strike insurance plan did not violate proscriptions of the Interstate Commerce Act:

These assertions must also fail, for the fundamental reason that the named statutes [the Sherman Act and the Interstate Commerce Act] were designed principally to outlaw restraints upon commercial competition in the marketing and pricing of goods and services and were not intended as instruments for the regulation of labor-management relations. 319 F.2d 366, at 372-3.

In commenting on the pooling characteristics of the strike insurance plan in the Kennedy case, the Second Circuit went on to state:

It may be true that the collection of premiums and payment of proceeds to a struck railroad might be viewed literally as the "division * * * of gross or net earnings," since contributions to the insurance fund were from the passenger and freight revenues of the participating roads. But so too are their contributions to the A.A.R., a trade association . . . whose expenses are met by assessments from its members in proportion to their operating revenues; but we do not understand the appellants to contend that the mere existence of the A.A.R., or of any other trade association in the transportation field, runs afoul of the anti-pooling provision of the Interstate Commerce Act and also, incidentally, of the Sherman Act. Similarly here, the strike insurance plan does not represent an attempt to apportion business among competing railroads on a basis other than individual performance. Its validity under the Interstate Commerce Act § 5(1) can thus hardly be doubted.
319 F.2d 366, at 374 (footnotes omitted).

In the instant case, the Commission found that the mech fund agreement did not affect the competitive relationships among the PMA members, as there was no agreement among the members to pass on all or a part of the fund assessments. The decision of whether to absorb or pass on the assessments was left to each individual member, and no concerted action was taken to determine the course the members would take. The Commission explicitly found that there was a divergence of opinion among the members as to whether the assessments would be absorbed or passed on (R. 9).

The Commission's interpretation in these circumstances was a reasonable one, and even though it may not have been the only reasonable one that could have been reached, it should be upheld especially where, as here, it is supported by the legislative history and a similar construction of like provisions of the Interstate Commerce Act. As this Court

recently said in Philadelphia Television Broadcasting Co. v. Federal Communications Commission, decided March 28, 1966 (No. 19,577):

In approaching the problem of statutory interpretation before us, we show "great deference to the interpretation given the statute by the officers or agency charged with its administration. 'To sustain the Commission's application of this statutory term, we need not find that its construction is the only reasonable one, or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings.'" Slip Opinion, pp. 2-3 (footnote omitted).

II. THE COMMISSION CORRECTLY FOUND NO VIOLATION OF SECTION 16 OF THE SHIPPING ACT, 1916.

Petitioner alleges that its automobiles are discriminated against and "logs, lumber, bulk cargo, scrap metal, in fact, all other general cargo, are preferred" (Pet. Br. 40), in violation of section 16 of the Shipping Act, 1916. That section makes it unlawful for any common carrier or other person subject to the Act

To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever

.....

Petitioner admitted in its Brief to the Examiner that previous decisions of the Commission held section 16 inapplicable in a case such as the instant one. See, e.g., Huber Mfg. Co. v. N.V. Stoomvaart Maatschappij Nederland, 4 F.M.B. 343 (1953); The Paraffine Co.'s, Inc. v. Amer.-Hawaiian S.S. Co., et al., 1 U.S.M.C. 628 (1936); Johnson Pickett Rope

Co. v. Dollar S.S. Lines et al., 1 U.S.S.B.B. 585 (1936). In those cases the Commission's predecessors held that section 16 was applicable only in situations concerning similarly situated shippers or ports. The Examiner found that there was "no other cargo classification in competition with automobiles" and he, therefore, rejected petitioner's allegation of a violation of section 16 (I.D. 35). The Commission affirmed (R. 9).

Petitioner now reiterates its argument based wholly on the Government's Brief in the case of New York Foreign Freight Forwarders and Brokers Assn. v. Federal Maritime Commission, 337 F.2d 289 (2nd Cir. 1964), cert. den. 380 U.S. 914 (1965). In that case the Commission was defending a rule which required full disclosure to shippers of insurance costs of the freight forwarders, a rule which was the culmination of many years of Congressional and agency hearings. The Court of Appeals affirmed the rule. In promulgating the rule the Commission found it unnecessary to make a finding of a competitive relationship as a basis for holding the disadvantage in that case unreasonable, because of the peculiar nature of the industry (freight forwarding) that it was regulating. Arguments that such a finding was necessary were urged on the Second Circuit, which rejected them:

Transportation or wharfage charges are dependent upon the particular commodity involved; the cost for shipping or storing bananas, for example, bears no relation to the fees levied for heavy industrial equipment. To find an unlawful discrimination in transportation charges thus quite properly requires a showing of competitive relationship between two shippers who are charged different

prices. But forwarders render substantially the same service to all shippers in procuring insurance or arranging cartage; the commodity being shipped has little or nothing to do with the reasonableness of the fee exacted for the forwarder's service. The very practice of charging shippers disguised markups of widely varying amounts on substantially identical services, without justification, seems to us to be *prima facie* discriminatory in a regulated industry. In any event, we do not believe competitive relationships must be shown to justify the prophylactic disclosure technique of Rule 510.23(j). 337 F.2d at 299-300.

In the instant case, the assessments bear a direct relationship to the type of cargo carried or handled, and thus a competitive relationship must be shown. Both the Examiner and the Commission, we submit, correctly found no violation of section 16.

III. THE COMMISSION CORRECTLY FOUND NO VIOLATION OF SECTION 17 OF THE SHIPPING ACT, 1916.

Petitioner alleges that the use of the measurement ton rather than the weight ton for making assessments for the fund constitutes an "unreasonable practice * * * relating to * * * the handling of property" in violation of section 17 of the Shipping Act, 1916. If the assessment were made on a weight ton basis, petitioner's grievance would probably be eliminated (R. 10). Both the Examiner and the Commission found no violation of section 17 in the manner of making assessments for the fund. The Examiner found no evidence that "charges attributable to the handling of other cargo are attempted to be collected by Respondents from Volkswagen" (I.D. 37) and that it appeared that the inclusion of the assessments by MTC in their charges to petitioner was only a matter of "business expediency." (Id.). The Examiner therefore concluded that there was "insufficient evidence * * * to establish that this practice was either unjust or unreasonable." (Id.).

Petitioner's admission that there is no requirement that all users of a facility be equally assessed, the Commission thought, was fatal to its section 17 allegation (R. 10). The Commission concluded that as long as "substantial benefits" accrue to one against whom a charge is levied, the charge would not be declared unlawful. See Evans Cooperage Co., Inc. v. Board of Commissioners, 6 F.M.B. 415 (1961).

In the context of the allegation of a section 17 violation, it must be kept in mind that petitioner is charging MTC and not PMA with the violation. And, it is PMA's membership that made the decision as to how the assessments for the fund were to be made, and more particularly, that assessments on automobiles were to be made on the basis of "measurement ton." Therefore, MTC is paying assessments to PMA as PMA's membership has directed. The fact that it is passing them on to petitioner is a decision that is has reached by itself. The Commission recognized that MTC's activities were reasonable because "they have sought to change the method of 'Mech' fund assessment on automobiles, have offered to pass on only a part of the assessment, and have levied a part of their dues assessment against Volkswagen for several years upon the same measurement basis without protest." (R. 10-11).

The Examiner recognized the necessity for focusing only on the relationship between petitioner and MTC:

As stated above, neither PMA nor the agreement between and among PMA members has been found subject to the Act. For that reason we do not comment on the justness or unjustness, reasonability or unreasonability of the actions of PMA

or the aims and purposes of that agreement. Volkswagen is complaining about Respondents practice of including the Mech fund assessment in its stevedoring rate. This discussion concerning Section 17, therefore, deals with the relationship between Respondents MTC and Volkswagen. (I.D. 35, emphasis supplied).

The Examiner went on to find that there was no evidence that the inclusion of the assessments increased MTC's profits, or that MTC's profits were unreasonable. He concluded that the inclusion of the assessment represented an operating expense, and that MTC had taken all reasonable steps available to assist petitioner in order to have the assessment changed by PMA. Those efforts having failed, MTC was not guilty of a violation of section 17 by continuing to include the assessment in its charge to petitioner.

Respondents submit that this is an area where the expertise of the agency is entitled to its greatest weight. Both the Commission and the Examiner examined all the pertinent facts and found that MTC's conduct did not violate section 17. That finding should be affirmed.

CONCLUSION

The Report and Order of the Federal Maritime Commission here under review should be affirmed.

Respectfully submitted,

Donald F. Turner
Assistant Attorney General

James L. Pimper
General Counsel

Irwin A. Seibel
Attorney

Robert N. Katz
Solicitor

Department of Justice

Walter H. Mayo III
Attorney

Washington, D. C.
May 5, 1965

BRIEF FOR INTERVENOR,
PACIFIC MARITIME ASSOCIATION

In the
United States Court of Appeals
for the
District of Columbia Circuit

No. 19,840

VOLKSWAGENWERK AKTIENGESELLSCHAFT,
Petitioner,
against
FEDERAL MARITIME COMMISSION and
UNITED STATES OF AMERICA,
Respondents,
PACIFIC MARITIME ASSOCIATION and
MARINE TERMINALS CORPORATION,
Intervenors.

**On Petition to Review and Set Aside Order of the
Federal Maritime Commission**

United States Court of Appeals
District of Columbia Circuit

EDWARD D. RANSOM
GARY J. TORRE
R. FREDERIC FISHER
LILLICK, GEARY, WHEAT, ADAMS &
CHARLES

311 California Street
San Francisco, California 94104
1625 K Street, N.W.
Washington, D.C. 20006

*Attorneys for Intervenor
Pacific Maritime Association*

QUESTIONS PRESENTED

After extended pre-trial discussions, the parties reached a compromise agreement on the issues presented in this appeal. Petitioner Volkswagenwerk, A.G. has disregarded this statement, and in lieu thereof, presented an argumentative and factually misleading* statement of the issues. We cannot, therefore, agree with Petitioner's statement of the questions presented.

The questions presented by this appeal are as follows:

- I. Does the record support the conclusion of the Federal Maritime Commission (FMC) to the effect that the collective action in which members of the maritime industry engage in the conduct of their labor relations does not constitute a "cooperative working arrangement" within the meaning of Section 15 of the Shipping Act, 1916?
- II. Does the record support the findings of fact by the FMC that members of the Pacific Coast maritime industry did not in violation of Section 15 of the Act agree, formally or informally, as to how their labor costs would be reflected in their respective charges to their customers?
- III. Does the record support the determination of the FMC that "unreasonable prejudice or disadvantage" prohibited by Section 16 of the Act, was not established?
- IV. Does the record support the determination of the FMC that unreasonable practices prohibited by Section 17 of the Act were not established?

**Inter alia*, petitioner's statement that PMA members have fixed varying commodity rates is a distortion of the record as the following statement of fact will reveal.

In the
United States Court of Appeals
for the
District of Columbia Circuit

No. 19,840

VOLKSWAGENWERK AKTIENGESELLSCHAFT,
Petitioner,
against
FEDERAL MARITIME COMMISSION and
UNITED STATES OF AMERICA,
Respondents,
PACIFIC MARITIME ASSOCIATION and
MARINE TERMINALS CORPORATION,
Intervenors.

**On Petition to Review and Set Aside Order of the
Federal Maritime Commission**



SUBJECT INDEX

	Page
Jurisdictional Statement	1
Statement of Case	1
Summary of Argument	8
Argument	9
I. FMC Correctly Determined the Collective Action Concerning the Labor Relations of Persons Subject to the Shipping Act, 1916 Is Not Subject to Section 15 of the Act	9
A. Specific Trade Practices Specified in Section 15 Do Not Relate to the Actions Condemned by Petitioner	9
(1) Fixing or Regulating Transportation Rates or Fares	10
(2) Giving or Receiving Special Rates, Accommodations or Other Special Privileges or Advantages	11
(3) Controlling, Regulating, Preventing or Destroying Competition	14
(4) Pooling Earnings, Losses and Traffic.....	15
(5) Allotting Ports and Sailings.....	15
(6) Limiting Freight	15
B. The Mechanization Agreement and Actions of PMA and Its Members to Implement the Agreement Are Not a "Cooperative Working Arrangement" Within the Meaning of Section 15.....	16
II. The Record Supports the FMC Finding of Fact That Members of PMA Did Not Agree as to How Their Respective Charges to Customers Would Be Determined....	27

SUBJECT INDEX

	Page
A. Standard for Review for Commission's Findings of Fact	27
B. Substantial Evidence Supports the Commission's Findings	29
III. FMC Correctly Determined on Substantial Evidence That a Violation of Section 16 of the Shipping Act, 1916 Had Not Been Established.....	35
IV. The FMC Determination That a Violation of Section 17 of the Shipping Act, 1916 Was Not Established Is Supported by Substantial Evidence.....	38
Conclusion	42
Certificate of Service	48
Appendix I	
(1) "Liner interests" Do Not Control Pacific Maritime As- sociation	1
(2) The Method Adopted for Funding Mechanization Plan Was Not Specially Designed and Tailored to Burden Petitioner	1
(3) Petitioner Substantially Benefited from Adoption of the Plan	2
Appendix II	

TABLE OF AUTHORITIES CITED

CASES	Pages
Agreement Nos. 8225 and 8225-1, 5 F.M.B. 648 (1959) aff'd; Greater Baton Rouge Port Comm'n v. United States, 287 F.2d 86 (5th Cir. 1961), cert. denied 368 U.S. 985 (1962)	10
Agreement 8905—Port of Seattle & Alaska S.S. Co., 7 F.M.C. 792 (1964)	10
Airlines Negotiating Conference Agreements, 8 C.A.B. 354 (1947)	17
*Alcoa Steamship Company v. Federal Maritime Commission, 116 U.S. App. D.C. 143, 321 F.2d 756 (1963)	16, 29
Allen Bradley Co. v. Local 3, International Brotherhood of Electrical Workers, 325 U.S. 797 (1945)	22
American Union Transport v. River Plate Brazil Conference, 5 F.M.B. 216 (1957) aff'd sub. nom.....	22
American Union Transport v. United States, 103 App. D.C. 229, 257 F.2d 607 (1958), cert. denied, 358 U.S. 828 (1958)	22
Apex Hosiery Co. v. Leader, 310 U.S. 469 (1940)	15, 24
Associated-Banning Co. v. Matson Nav. Co., 5 F.M.B. 432 (1958)	22
*Boston Wool Trade Ass'n v. Merchants & M.T. Co., 1 U.S. S.B. 24 (1921)	36
California v. United States, 320 U.S. 577 (1944)	37
Carnation Co. v. Pacific Westbound Conference, U.S. 34 U.S.L. Week 4181 (Feb. 28, 1966)	40
*Celotex Corp. v. Mooremack Gulf Lines, 1 U.S.M.C. 789 (1938)	36
*Consolo v. Federal Maritime Commission, U.S. 34 U.S.L. Week 4278 (March 22, 1966)	28, 33, 35, 39
*Evans Cooperage Company, Inc. v. Board of Commissioners of the Port of New Orleans, 6 F.M.B. 415 (1961)	41, 42
*Gray v. Powell, 314 U.S. 402 (1941)	16
*Huber Mfg. Co. v. N.U. Stoomvaart M. Wedeiland, 4 F.M.B. 343 (1953)	36
Imposition of Surcharge on Cargo to Manila, 5 SRR 788 (Pike & Fischer 1965)	36

*Cases or authorities chiefly relied upon are marked by asterisks.

TABLE OF AUTHORITIES CITED

	Pages
In the Matter of Shipowners Association of the Pacific Coast, et al., 7 N.L.R.B. 1002 (1938).....	20
In the Matter of Wharfage Charges and Practices at Boston, Mass., 2 U.S.M.C. 245 (1940).....	10, 22
*Kennedy v. Long Island R.R. Co., 319 F.2d 366 (2d Cir. 1963) cert. denied 375 U.S. 880 (1963).....	15, 17, 24
Local 24 et al. v. Oliver, 358 U.S. 283 (1959).....	21
Maatschappij "Zeetransport" N.V. (Orange Line) v. Anchor Line Ltd., 6 F.M.B. 199 (1961).....	22
*National Labor Relations Board v. Hearst Publications, 322 U.S. 111 (1944)	16
*National Labor Relations Board v. Insurance Agents' Inter- national, 361 U.S. 477 (1960).....	11, 21
*National Labor Relations Board v. Truckdrivers Local 449, 353 U.S. 87 (1957).....	15, 20
New York Foreign Freight Forwarders and Brokers Ass'n v. FMC, 337 F.2d 289 (2d Cir. 1964), cert. denied. 380 U.S. 914 (1965)	37
*Pacific Lumber & Shipping Co. v. Pacific-Atlantic S.S. Co., 1 U.S.M.C. 624 (1936).....	36
*Paraffine Companies, Inc. v. American-Hawaiian S.S. Co., 1 U.S.M.C. 628 (1936).....	36
*Picket Rope Co. v. Dallas S.S. Lines, Ltd., 1 U.S.S.B. 585 (1936)	36
*Port of Philadelphia Ocean Traffic Bureau v. Export S.S. Corp., 1 U.S.S.B. 538 (1936).....	36
Puget Sound Tug & Barge Co. v. Foss Launch & Tug Co., 7 F.M.C. 43 (1962).....	22
*Rochester Tel. Corp. v. U.S., 307 U.S. 125 (1939).....	16
Six-Carrier Mutual Aid Pact, 29 C.A.B. 168 (1959).....	17
States Marine Lines v. Federal Maritime Commission, 99 U.S. App. D.C. 312, 313 F.2d 906, 908 (1963) cert. denied, 374 U.S. 831 (1963).....	29
Status of Carloaders & Unloaders, 2 U.S.M.C. 761 (1946).....	10

*Cases or authorities chiefly relied upon are marked by asterisks.

TABLE OF AUTHORITIES CITED

v

	Pages
*Trans-Pacific Freight Conference of Japan v. Federal Maritime Commission, 314 F.2d 928 (C.A. 9th 1963).....	16
*Tri-State Wheat Transp. Council v. Alameda Transp. Co., 1 U.S.M.C. 784 (1938).....	36
 Unapproved Section 15 Agreements—North Atlantic Spanish Trade, 7 F.M.C. 337 (1962).....	22
Unapproved Section 15 Agreements—South African Trade, 7 F.M.C. 159 (1962).....	22
Unapproved Section 15 Agreements—West Coast South America Trade, 7 F.M.B. 22 (1961).....	22
*United States v. Hutcheson, 312 U.S. 219 (1940).....	15
*United States Navigation Company, Inc. v. Cunard Steam- ship Co. Ltd., 284 U.S. 474 (1932).....	17
 *West Indies Fruit Co. v. Flota Mercante, 7 F.M.C. 66 (1962)	36

STATUTES

Administrative Procedure Act, Section 10, 5 U.S.C. § 1009....	1
*Clayton Act, Section 17, 15 U.S.C. § 17.....	24
Federal Aviation Act, Section 401, 49 U.S.C. § 1371(k)	18, Appendix II, p. 8
Interstate Commerce Act, Section 5(1), 49 U.S.C. § 5(1)	17, Appendix II, p. 8
Judicial Review Act, Sections 2 and 9, 5 U.S.C. §§ 1032, 1039	1
Merchant Marine Act, 1936, 46 U.S.C. § 1171.....	24
Title X, Pub. Law 705, 75th Cong. 3rd Sess. Ch. 600, §§ 45 et seq. (repealed)	24, 25
Railway Labor Act, 45 U.S.C. §§ 151-163, 181-188.....	17
Shipping Act, 1916, 4 U.S.C. §§ 801 et seq.....	Passim
Section 1, 46 U.S.C. § 801.....	38
Section 15, 46 U.S.C. § 814.....	9, 16
Section 16, 46 U.S.C. § 815.....	35
Section 17, 46 U.S.C. § 816.....	38
Section 31, 46 U.S.C. § 830.....	1

*Cases or authorities chiefly relied upon are marked by asterisks.

TABLE OF AUTHORITIES CITED

OTHER AUTHORITIES	Pages
Alexander Report, Committee on the Merchant Marine and Fisheries, House of Representatives, 63rd Cong. Report of Investigation of Shipping Combinations Under House Resolution 587, 4 Vol.	Passim
*93 Cong. Rec. March 10, 1947, p. 1899.....	20
*93 Cong. Rec. May 12, 1947, p. 5144.....	20
*Cox, <i>Labor and the Antitrust Laws—A Preliminary Analysis</i> , 104 U. of Pa. L. Rev. 252 (1954).....	24
Hearings before Antitrust Subcommittee of the Committee of the Judiciary, House of Representatives, 86th Cong. 1st Sess. (1959)	26
Hearings before Merchant Marine and Fisheries Subcommittee of the Committee of Commerce, U.S. Sen., 87th Cong. 1st Sess. on H.R. 6775 Steamship Conferences/Dual Rate Bill (1961)	26
Hearings before Special Subcommittee on Steamship Conferences of Committee on Merchant Marine and Fisheries, House of Representatives, 86th Cong., 1st Sess. (1959) Steamship Conference Study	26
Hearings before Special Subcommittee on Steamship Conferences of the Merchant Marine and Fisheries, House of Representatives, 87th Cong. 1st Sess. on H.R. 4299 (1961)	26
Hearings on H.R. 1897, H.R. 2004, H.R. 2331, 88th Cong. 1st Sess. p. 573 (1963).....	Appendix I, p. 7
Maritime Labor Board. Report to the President and to the Congress (1940)	25
Shulman, <i>Reason, Contract, and Law in Labor Relations</i> , 68 Harv. L. Rev. 999 (1955).....	11
Somers, <i>The Changing Impact of Fringe Benefits on Industrial Relations</i> , 13 Labor Law Journal 957 (1962).....	11

*Cases or authorities chiefly relied upon are marked by asterisks.

JURISDICTIONAL STATEMENT

We agree that the jurisdiction of this Court as established by Section 31 of the Shipping Act, 1916 (46 U.S.C. § 830), Sections 2 and 9 of the Judicial Review Act, as amended (5 U.S.C. §§ 1032, 1039) and Section 10 of the Administrative Procedure Act (5 U.S.C. § 1009) has been properly invoked.

STATEMENT OF CASE

Petitioner commences its brief with a statement of facts which is irrelevant in view of the limited functions of this Court when reviewing the findings of fact and conclusions of law of the Federal Maritime Commission (FMC). At this juncture the sole question, as all controlling judicial authorities agree, is whether the record before the Commission supports its determinations. Instead of addressing itself to this question, petitioner seeks a *de novo* trial of every factual issue raised by it and rejected by the Trial Examiner and the Commission. This case presents the startling contention that the FMC has since 1916 possessed a jurisdiction under the Shipping Act, 1916 (46 U.S.C. § 801 et seq.) heretofore unrecognized by it or the shipping industry. A restatement of the factual background, well-established by undisputed evidence, is required before the limited legal questions before this court can be seen in perspective.

Intervenor, Pacific Maritime Association (PMA) is a non-profit corporation. Its members comprise substantially all of the Pacific Coast shipping industry: substantially all carriers of dry cargo having principal places of business on the Pacific Coast, as well as operators of public marine terminals and stevedore contractors serving such carriers or, in some cases, nonmember carriers and shippers, are

members of PMA (FMC p. 1, Exs. 5-A, 5-B, 39, 40, 41).¹ Intervenors Marine Terminals Corporation and Marine Terminals Corporation of Los Angeles (referred to herein as MTC) are two of many PMA members engaged in business as stevedore contractors (FMC p. 1; Exs. 39, 40, 41).

There is no question that the members of PMA are engaged in substantial competition with each other as well as with nonmembers (Tr. 347). There is no question that many of the members of PMA are persons subject to the Shipping Act, 1916, and that many of their activities outside the councils of PMA, whether undertaken individually or collectively, are subject to regulation under the Shipping Act, 1916. It is evident that the economic interests of PMA members who are stevedore contractors or operators of terminals do not in all respects coincide with the economic interests of PMA members who operate vessels and are the customers of the stevedore contractors (I.D. pp. 5-6).

PMA, or predecessor organizations, have existed on the Pacific Coast since the early thirties. PMA is *not* a rate-making conference, but its only concern, in the words of its President, "is merely the negotiation of wages, hours, and working conditions for the people" represented by the maritime unions (Tr. 343; FMC p. 1).

The International Longshoremen's and Warehousemen's Union (ILWU) is the certified collective bargaining representative of all longshoremen and marine clerks employed by members of PMA (FMC p. 1; Tr. 344-45). For many

1. References to the decision of the Commission are identified by "FMC"; references to the decision of the Trial Examiner are identified by "I.D.>"; references to the reporter's transcript are identified by "Tr." with the page number of the typewritten transcript; references to exhibits admitted by the Trial Examiner are identified by "Ex."; reference to Petitioner's Brief are identified by "Op. Br.".

years it has by collective negotiations with PMA established, on a coastwide basis, the terms and conditions governing the employment of longshoremen and marine clerks. This case derives from the collective negotiations of PMA and ILWU commencing as early as 1957 and culminating in October 1960 in the Mechanization Plan (FMC p. 2; Tr. 351-360, Exs. 1-A to 1-J, inclusive). Two years of extended negotiations after extensive preparatory studies by ILWU and PMA finally achieved a significant and widely proclaimed resolution of problems attendant with automation (FMC p. 2; Tr. 359).

Recognizing the pressing need for modernization of obsolete cargo-handling practices, ILWU granted the longshore industry comprehensive powers to eliminate slowdowns, double-handling and other unproductive, make-work practices and to introduce labor-saving devices (FMC p. 2, I.D. p. 7, Tr. 348-351, 375-379; Ex. 1-B, pp. 1-6). In exchange for this valued opportunity PMA members agreed to provide handsome fringe benefits for longshoremen and marine clerks who would otherwise suffer substantial economic distress as work opportunities were reduced. Severance benefits were provided to secure a reduction of the work-force by inducing early retirement, (Ex. 1-E) and supplementary wage payments were designed to maintain minimum wage levels (Ex. 1-F). Liberalized payments for death and disability were also adopted (Ex. 1-D). To assure the Union that these massive benefits would, indeed, be paid, PMA members agreed to accumulate a fund of twenty-nine million dollars over a five-and-a-half year period² (FMC p. 2; I.D. p. 7).

2. In view of petitioner's statement of questions presented which suggests it challenges the legality of payments to PMA, the Court should be aware that all PMA collections under the Plan were to provide employee benefits and such collections could not be used for PMA operations (Ex. 1-C, Art. III, Sec. 2).

Because of the numerous novel problems presented by the negotiations PMA and ILWU were unable, in the time available, to develop a method for collecting the Fund (Tr. 380-386). Instead, ILWU, having contract assurances that twenty-nine million dollars would be accumulated, agreed to rely on PMA's good faith in devising a funding method which would assure collection of the Fund and be consistent with the overall objective of the Plan to revitalize an industry being suffocated by exorbitant longshore costs (FMC p. 2; I.D. p. 7; Tr. 381, 385-386). Accordingly, as petitioner emphasizes, Article II, Section 2 of the formal documents gives power to PMA to determine how the Fund may be collected (Ex. 1-C).³ Petitioner ignores the further provision of Article II, Section 2 of the ILWU Agreement, which requires PMA members who employ longshoremen and marine clerks to contribute to the Fund in such amount and rates as PMA determines (Ex. 1-C). The benefits and costs of the Plan (Tr. 374-78) and the interest which the ILWU retained in the funding methods adopted by PMA are inextricably linked (Tr. 386-388). Petitioner's dogged and misleading efforts to separate the method adopted for collection of the Fund from the collective agreement that it praises, fail when viewed in the light of the actual concerns of ILWU and PMA during negotiations (Tr. 374-78).

Pursuant to its agreement with ILWU, PMA developed a method for collecting the Mechanization Fund. An extensive study was undertaken by a PMA committee established to formulate a means of distributing Fund costs

3. Petitioner conveniently ignores ILWU's continuing right to insist that this power be exercised consistently with its reliance on the good faith of PMA not to adopt a method of collection which could have the effect of eliminating "marginal" operations, such as the handling of coastwise lumber, when the objective of the Plan was to reduce longshore costs so as to revitalize trades which had disappeared (Tr. 351, 386-88).

among the employers of longshoremen and marine clerks who are the beneficiaries of the Fund (FMC pp. 2-3; Tr. 89-96). The deliberations of the committee members were open and the subject of industry-wide debate (Tr. 96-99, 393-95). PMA's Board of Directors reviewed the committee's recommendations (Ex. 5-A) and presented them to the membership. The membership, in accordance with the normal and well-established operating procedures of employer collective bargaining associations, adopted the funding method contemporaneously with its ratification of the Agreement with the ILWU (FMC pp. 2-3; I.D. p. 8). The President of PMA was concerned that the funding arrangements, which he viewed as an integral part of the Plan (Tr. 374-78), be settled before the Agreement as a whole was presented for ratification (Tr. 393, 413-414). MTC, as a member of PMA, together with other member companies employing longshoremen and marine clerks, became obligated both pursuant to its agreement with ILWU and as a member of PMA to contribute to the Mechanization Fund in accordance with the funding methods developed by PMA Ex. 1-C, Art. II, Sec. 2).

The funding arrangements of the Plan provide for distribution of the labor costs of the Mechanization Plan, as follows:

Employers of marine clerks (generally operators of marine terminals) must contribute annually in the same proportion that the number of marine clerks represents in the overall pool of longshore workers (FMC p. 3; I.D. p. 17; Tr. 104-106; Ex. 56). The contribution of each employer is calculated on a man-hour basis.⁴ Twelve percent, approxi-

4. It is noteworthy that a man-hour assessment was adopted for employers of marine clerks *only* because the Funding Committee discovered that any other basis of assessment in this instance was administratively unfeasible (Tr. 105).

mately, of the total Fund is collected on this basis (Tr. 105-06).

Employers of longshoremen are required to accumulate the remainder of the Fund, each according to the volume of cargo it handles (FMC p. 2; I.D. pp. 12-13, 17). The tonnage handled by each employer is ascertained in the manner which has been used for many years for the assessment of membership dues (FMC p. 2; I.D. p. 11; Tr. 396-397; Ex. 5-A, p. 5). This is the so-called "tonnage formula" or "tonnage assessment" that petitioner asserts is a "tax" on cargo. (Op. Br., p. 35).

However, as the record required, the Trial Examiner found (1) that "a careful reading" of the documents respecting funding of the Plan "show they deal solely with 'the appropriate manner of dividing the costs' of the Mech Fund among the PMA members." (I.D. pp. 22-23); (2) that the PMA membership, Board of Directors, and its Committee did not "do more than establish a method of assessment of the membership for contributions to the Mech Fund" (I.D. p. 23); (3) that PMA members did not, as such, agree "among themselves how this assessment was to be treated after it was made", and PMA did not "issue any directions to any PMA member as to how it was to handle the assessment after it was made" (I.D. p. 23); (4) that the charging of labor costs incurred under the funding methods approved by PMA in the rates of PMA members was not required by any action of PMA (I.D. p. 23); (5) that the agreement among PMA members as to how the costs of the Plan were to be allocated among employers of longshoremen and marine clerks did not include any agreement that the Mechanization Fund charge was to be passed on by the PMA members to their respective customers (I.D. p. 24); and (6) that MTC *did* offer a rate to petitioner wherein MTC

would absorb part of the costs incurred by it under the Plan, which offer would have been "so much surplusage" if the funding arrangements "provided that the Mechanization Fund charge was to be passed on to the customer." (I.D. p. 24).

Petitioner did not except to any of the foregoing findings, as a review of its formal exceptions⁵ filed on appeal from the Trial Examiner's decision will disclose. Nonetheless, every effort was made in the argumentative portions of petitioner's brief filed with the FMC, as in its brief filed with this Court, to create a contrary impression.

The Commission also found that there was no "agreement by the PMA membership to pass on all or a portion of its assessments to the carriers and shippers served by terminal operators." (FMC p. 9). Agreeing with the Examiner, FMC found that the record established that the only agreement of the membership of PMA pertained "to the manner of assessing its own membership for the collection of" the Fund required by the ILWU-PMA Mechanization Plan (FMC p. 8). Since that agreement affects only labor-management relations, the FMC concluded that a violation of Section 15 had not been established, because the Shipping Act, 1916 did not cover the conduct of persons subject thereto when they had joined together in "pools whose sole concern is labor-management relations." (FMC pp. 8-9).

If any questions of substance are presented by this appeal, they concern the FMC findings of fact and conclusions of law under Section 15 of the Shipping Act, 1916. Petitioner's arguments under Sections 16 and 17 are, we shall show, merely make-weights for petitioner's case under Section 15.

5. See, Petitioner's brief filed with FMC pp. 1a-6a. Petitioner's Exception number 3 does not challenge the aforementioned findings. This Exception relates to the financial consequences for companies participating in the Plan and does not challenge the Examiner's findings that the agreements asserted by petitioner did not exist.

SUMMARY OF ARGUMENT

I. The FMC was required to reject petitioner's construction of Section 15 of the Shipping Act as embracing *all* collective actions of members of the maritime industry. None of the specific trade practices regulated by Section 15 pertain to collective action undertaken in connection with labor-management relations. Petitioner's construction of Section 15 would subject all aspects of collective bargaining in the maritime industry to the jurisdiction of FMC. Governing judicial and administrative authorities, as well as the legislative history of the Act and the continuing Congressional concern with maritime labor matters, precluded a determination that such collective action constitutes a "cooperative working arrangement", or any other type of "understanding" or "arrangement", within the scope of Section 15. Hence, the FMC conclusion of law that the collective action of PMA members in negotiating the Mechanization Plan and providing for the funding of the benefits thereof does not constitute a violation of Section 15, must be affirmed.

II. The FMC finding of fact that the members of PMA did not agree, formally or informally, that their respective labor costs incurred under the Mechanization Plan would, as such, be passed on to their customers is supported by substantial evidence. It is, therefore, irrelevant as to whether the evidence may possibly support a contrary finding.

III. The FMC determination that a Section 16 violation had not been established is supported by substantial evidence. Its expertise judgment as to what constitutes preferential or prejudicial conduct as between shippers is entitled to great weight. Its well-settled application of Section 16 should not be set aside.

IV. The FMC determination that a Section 17 violation had not been established is supported by substantial evidence. It is not an unreasonable practice for a stevedore contractor to join PMA for the conduct of its labor relations, to accept the obligations and responsibilities of the contracts negotiated by PMA with maritime unions, and to abide by the resolutions promulgated by a majority of the members in order to implement and discharge the obligations undertaken in such contracts. Hence, it is not an unreasonable practice for such a contractor to seek to recover in its charges, which are established by private negotiation with its customers, the labor costs incurred as a consequence of such contractor's participation in PMA.

ARGUMENT

- I. FMC Correctly Determined That Collective Action Concerning the Labor-Management Relations of Persons Subject to the Shipping Act, 1916 Is Not Subject to Section 15 of the Act.**
 - A. THE SPECIFIC TRADE PRACTICES SPECIFIED IN SECTION 15 DO NOT RELATE TO THE ACTIONS CONDEMNED BY PETITIONER.**

Section 15 of the Shipping Act, 1916 (46 U.S.C. § 814) permits and allows the shipping industry to engage in trade practices which would otherwise be condemned by the anti-trust laws of the United States, provided that the Commission is first satisfied that the practices involved conform to the policies of the Act and approves the proposed collective action. The specific trade practices specified in the Section reveal the Congressional concerns which resulted in the enactment of the Shipping Act, 1916.

The specific trade practices which are proscribed unless prior approval of the Commissioner has been obtained are as follows:

(1) Fixing or Regulating Transportation Rates or Fares.

"Fares" relate to passenger tickets. Petitioner cites cases that recite the well-established but irrelevant rule that agreements that fix rates for "wharfage, dockage, and wharf demurrage" are Section 15 agreements "fixing or regulating transportation rates." (Op. Br. p. 28). This rubric only restates the statute. The cases all relate to direct fixing of terminal rates and charges: none relate to straight stevedore charges like those challenged by petitioner.⁶ The question of this litigation is whether the statute applies to a labor agreement and action of an employer group in providing for the funding of employee benefits established by such agreement. An agreement which establishes labor costs fixes neither terminal nor stevedore rates, as is evidenced by the MTC offer to petitioner to absorb a portion of its labor costs under the Plan.

Petitioner appreciates this self-evident proposition, but insists that the Mechanization Plan by creating a substantial cost item indirectly constitutes rate fixing. This contention assumes that the increase in cost necessarily increases the charges made to the stevedore customers in the

6. Agreement 8905—*Port of Seattle and Alaska S.S. Co.*, 7 FMC 792, (1964) (Terminal time-fixing tariffs); *Agreement Nos. 8225 and 8225-1*, 5 F.M.B. 648 (1959) aff'd: *Greater Baton Rouge Port Comm'n, v. United States*, 287 F. 2d 86 (C.A. 5th, 1961), cert. denied, 368 U.S. 985 (1962) (Agreement fixing terminal rates); *Status of Carloaders and Unloaders*, 2 U.S.M.C. 761 (1946) (Agreement directly fixing rates for loading and unloading railroad cars deemed agreement regulating handling and storage charges); *In the Matter of Wharfage Charges and Practices at Boston, Mass.*, 2 U.S.M.C. 245 (1940) (Agreement directly fixing wharfage charges). Marine clerks are the primary pool of workers employed by terminal operators to perform the clerking services rendered by these facilities to the public. Petitioner does not protest the reflection in MTC's charges of the increased labor costs attendant, as consequences of the Plan, with the employment of such clerks (Tr. 301).

same amount. The findings and evidence are to the contrary (FMC pp. 4, 5, 9; I.D. 36. Tr. 398). As we shall show elsewhere,⁷ petitioner's argument results from a misconception of the function of industry-wide collective bargaining practices fostered by national labor policies. Rate fixing means agreeing to charge X price for moving Y commodity. Agreements that ultimately and indirectly may have some effect on rates are not agreements fixing transportation rates. To hold otherwise would expand Section 15 to embrace the collective actions of maritime employers in seeking labor agreements establishing wages, hours, welfare and pension plans, overtime rules, penalty time rules, workers' lunch facilities and every manner of fringe benefits.⁸

(2) Giving or Receiving Special Rates, Accommodations or Other Special Privileges or Advantages.

Petitioner seems to seek the cover of these provisions of Section 15 by characterizing the tonnage assessment as a "tax" on cargo and then asserting that the differential in rates applying to the handling of bulk and general cargo,

7. *Infra*, pp. 18-23.

8. Petitioner's misconception, which underlies Commissioner Patterson's dissent (FMC pp. 50-60), is that the *only legal* method for distributing labor costs is on a man-hour basis. Established customs in American industries, as described by the President of PMA in unchallenged testimony, demonstrate that labor costs are not determined by any single measure such as man-hours (Tr. 386-88, 392-93). The freedom from legal restraint as to how labor costs are determined is demonstrated by the consideration during negotiation of the Agreement of various methods of collecting the Fund and by the ILWU demand that the Fund be collected by a tonnage assessment (Tr. 382-86, 415). The fact is that Congress has deliberately refrained from circumscribing the collective bargaining process and has left to the ingenuity of the parties the power to determine how labor costs should be fixed. See, *NLRB v. Insurance Agents' International*, 361 U.S. 477 (1960); Shulman, *Reason, Contract, and Law in Labor Relations*, 68 Harv.L.Rev. 999 (1955); Somers, *The Changing Impact of Fringe Benefits on Industrial Relations*, 13 Labor Law Journal 957 (1962).

as well as coastwise lumber, constitutes a special privilege (e.g. Op. Br. p. 38). But, the funding arrangements of the Mechanization Plan do not in any sense impose a charge on cargo (I.D. pp. 23-24). These arrangements establish a labor cost incurred by employers of longshoremen and marine clerks. The President of the Association made clear that it was no concern of PMA or the group of employers as to how these costs were recovered; these recoveries are achieved, if at all, as the consequence of private contracts negotiated by stevedore contractors and their customers or in the published tariffs of terminal operators (Tr. 399). After two years of operations under the Plan, PMA was unable to develop statistics as to which longshore operations did or did not benefit from the Plan, notwithstanding that its statistics established that the industry as a whole had secured substantial benefits (Tr. 420). This is not surprising. The responsibility of PMA and the collective actions of its members are limited to developing industry-wide labor programs (Tr. 420-421). The consequence of these programs on the very diverse operations in which PMA members are engaged is the sole concern of each member acting independently (Tr. 388-92, 398-400). Thus, FMC found that no agreement among PMA members requires that all or any portion of the labor costs involved be so passed on to cargo (FMC p. 9).

The funding arrangements adopted by PMA members not only do not pertain to transportation rates, but also do not afford "special" privileges or advantages to the respective members. The granting of "special" privileges implies granting a beneficial variation from general practices. The findings and supporting evidence establish that each employer's obligation under the Fund is determined in accordance with the well-established general practice

and custom by which PMA collects membership dues from those members interested in its shoreside bargaining activities (FMC p. 2; I.D. p. 11: Tr. 396-97, 411-412; Ex. 5-A p. 5).⁹

Perhaps the best demonstration that the funding arrangements did not afford special privileges or advantages to some contractors is demonstrated by the response of the Army to the Plan. The Army, like petitioner, ships its MSTS cargoes, probably the largest single source of general cargo crossing Pacific Coast docks, by FIO arrangements under which it as shipper, and not the vessel, must procure the stevedore services required to move its cargoes. Certainly the Army, charged with heavy public responsibilities in the use of public funds, could be expected to be chary of any industry action in allocation of labor costs that could result in special advantages and preferment for some shippers at the expense of others. The Army did, at

9. A differential in the rates at which "cargo dues" are assessed for the handling of bulk cargo, on the one hand, and general cargo, on the other, has been established for a generation (Ex. 5-A). The continuance of this differential is not a deviation from a general custom or practice. Contractors handling scrap-metal were assessed at the bulk-rate because this longshore operation is the same as other bulk operations, as undisputed testimony makes clear (Tr. 112). Admittedly a variation was allowed cargo-handling operations involving coastwise lumber, a general cargo. These operations, unlike petitioner's, had been and continue to be burdened by an excessive penalty rate imposed by ILWU contracts since the early fifties because of automation of cargo-handling in these operations (Tr. 133-35, 417-18; Ex. 2-D p. 4). Such costs largely account for the disappearance of this trade, rendering longshore operations required by it "marginal" (Tr. 351, 364). Recognizing that the purpose of the Plan was to revitalize such operation, PMA could hardly insist dogmatically upon application of the method adopted by it for collecting the Fund so as to seal the fate of this disappearing trade without risking suspicion on the part of ILWU which could vitiate the mutual trust upon which the entire program depended. See footnote 3, *supra*. Finally, if an advantage were afforded to any group, it was, primarily, to nonmembers (Tr. 417-18).

the outset, question the manner in which its stevedore contractors were assessed for their contributions to the Plan (Tr. 123, 148). It was soon satisfied that these assessments were being determined under established industry practices which were considered a fair and equitable method for distribution of the costs of maintaining PMA and its programs. Therefore, the Army withdrew its objections to the presentation by its respective stevedore contractors, in their respective negotiations to fix the Army's stevedore rates, of their respective labor costs, whether incurred under the Plan or under other provisions of the longshore contract (Tr. 116-117, 148). The Army was satisfied that the method by which its contractors handling the many vehicles shipped by it were assessed—the identical method challenged by petitioner—was not unusual (Tr. 148). Petitioner, of all the shippers and carriers affected by these developments in the Pacific Coast longshore industry, is the only one believing that the Plan is the result of unlawful conduct.

(3) Controlling, Regulating, Preventing or Destroying Competition.

Petitioner states generally that when stevedores agree to recognize a uniform labor cost in connection with their services, they are reducing their capacity to compete (Op. Br. pp. 28-29). With this truism, applicable equally to any other industry, we agree. Labor costs are an important factor in the ultimate determination of stevedoring rates, just as labor costs are a major factor in establishing prices in other industries.

Section 15, however, in describing agreements "controlling, regulating, preventing, or destroying competition", has no more application to the agreements establishing uniform labor costs than do the companion provisions of the

Sherman Act. It is far too late in the day to conclude that concerted action, whether by unions or employers, which establishes uniform labor costs for an industry violates the antitrust policies intended to preserve competition. The major industries of the United States through collective bargaining on an industry or area basis have uniform labor costs.¹⁰ Whatever the doubts of an earlier day, it is now decided that the national policies favoring competition do not condemn the limitations imposed thereon by the existence of uniform labor costs in an industry.¹¹ All efforts to secure Congressional prohibition, or restrictions, upon the activities of employer groups like PMA because of the role they play in fixing uniform labor costs have failed.¹²

- (4) Pooling Earnings, Losses and Traffic;
- (5) Allocating Ports and Sealings; and
- (6) Limiting Freight.

Petitioner does not suggest that categories (4), (5) and (6) are pertinent.

The regulation of these trade practices by Congress serves to emphasize the type of anti-competitive agreements intended to be covered by Section 15. Each category relates to well-known transportation practices. Clearly none suggests concerted action undertaken for the collection of labor costs.

10. See undisputed testimony of Mr. St. Sure describing the forces creating and maintaining industry-wide bargaining, and the consequences thereof, in the industries of America (Tr. 345-348).

11. *United States v. Hutcheson*, 312 U.S. 219 (1940); *Apex Hosiery Co. v. Leader*, 310 U.S. 469 (1940); *Kennedy v. Long Island R.R. Co.*, 319 F. 2d 366 (C.A. 2d 1963) cert. den. 375 U.S. 830 (1963).

12. See, *NLRB v. Truckdrivers Local 449*, 353 U.S. 87 (1957).

B. THE MECHANIZATION AGREEMENT AND ACTIONS OF PMA AND ITS MEMBERS TO IMPLEMENT THE AGREEMENT ARE NOT A "COOPERATIVE WORKING ARRANGEMENT" WITHIN THE MEANING OF SECTION 15.

The concluding provisions of Section 15 proscribe unapproved "understandings" and "arrangements" which provide "for an exclusive preferential or cooperative working arrangement" (46 U.S.C. § 814). Seizing upon the generality of this language petitioner asserts that the Act "intended to bring under governmental scrutiny and surveillance all collective action by ocean carriers and related maritime enterprises" (Op. Br. p. 21, *passim*). The refusal of the Commission to accept this view of the Act is the basis for such legal questions as are presented by this appeal.

Whether an agreement or undertaking constitutes a "cooperative working arrangement" within the meaning of the Act presents, unquestionably, a mixed question of fact and law. The administrative agency delegated the responsibility of effectuating the policies of Congress is granted broad discretion for resolving such questions.

National Labor Relations Board v. Hearst Publications, 322 U.S. 111 (1944);

Gray v. Powell, 314 U.S. 402 (1941);

Rochester Tel. Corp. v. U.S., 307 U.S. 125 (1939);

Transpacific Freight Conference of Japan v. FMC, 314 F.2d 928, 935 (C.A. 9th, 1963);

Alcoa Steamship Company v. FMC, 116 U.S. App. D.C. 143, 321 F.2d 756 (1963).

FMC held that Section 15 had never been construed to pertain to *all* collective actions of persons subject to the Shipping Act, 1916 (FMC p. 7). Petitioner does not cite any decision which FMC overlooked in reaching this conclusion. Moreover, no case has ever arisen under the Shipping Act, 1916, which involves the type of collective action

which petitioner wishes to subject to the Commission's jurisdiction. Therefore, the Commission, relying upon the instructions of *U.S. Navigation Company, Inc. v. Cunard Steamship Co., Ltd.*, 284 U.S. 474 (1932), looked for guidance to authorities arising under provisions of the Interstate Commerce Act (49 U.S.C. § 5(1)) which are comparable to Section 15. It had been determined that "agreements which affect only labor-management relations" do not come within the scope of the Interstate Commerce Act, and that the jurisdiction of the ICC is dependent upon first "showing" that such "agreements have some impact upon the competitive relationship of those entering into them" (FMC p. 8). Accordingly, the Commission refused to adopt a construction of Section 15 which would expand the Section to cover negotiation and implementation of the Mechanization Plan. A contrary result would have been untenable in the light of *Kennedy v. Long Island Railroad*, 319 F.2d 366 (C.A. 2d 1963), cert. den. 375 U.S. 830 (1963).

Petitioner's attempted distinctions of the *Kennedy* decision must fail. The rule of the *Kennedy* decision indisputably governs all agreements among railroad carriers which pertain to labor-management relations, and it does not have the limited application suggested by petitioner. The Supreme Court in the *Cunard* decision made clear that the Interstate Commerce Act was the source for the Shipping Act, 1916. The decisions of the Civil Aeronautics Board (CAB) in *Six Carrier Mutual Aid Pact*, 29 C.A.B. 168 (1959) and *Airlines Negotiating Conference Agreements*, 8 C.A.B. 354 (1947) provide no comfort. The earliest regulatory Act pertaining to the aviation industry was not enacted until 1926, ten years after the enactment of the Shipping Act. Moreover, the provisions of the Federal Aviation Act direct the CAB to promote the policies of the Railway Labor

Act¹³ which governs labor relations in the airline industry. See 49 U.S.C. § 1371(k)(4). There is no like provision in the Shipping Act, 1916.

FMC wisely concluded that its jurisdiction under the Shipping Act, 1916 did not extend to concerted actions pertaining to maritime labor-management relations. Petitioner's view that *all* collective actions of members of the industry constitute "cooperative working arrangements" would, if adopted, immediately disrupt the conduct of labor relations in the maritime industry. The membership of PMA, like the membership of similar organizations existing on other coasts (Tr. 387), is comprised of many companies subject to the Shipping Act, 1916. Admittedly the collective actions that are covered by the Shipping Act, 1916 may not be lawfully enforced or observed by persons subject to the Act, unless first approved by FMC. None of the collective actions undertaken or agreements entered into within the councils of PMA has ever been submitted for approval by FMC. The range of collective actions which have been undertaken without approval of FMC, on the assumption that the Shipping Act, 1916 is inapplicable, and which would be unlawful if petitioner's construction of the Act were adopted, is worthy of consideration.

Collective bargaining associations to represent employers in collective bargaining have been formed (Tr. 342), by-laws have been adopted to govern the conduct of the organization and its members (Ex. 3), and substantial staffs have been employed to man such associations (Tr. 343-344). By their collective action the members of the industry have established industry-wide hiring halls (Tr. 395), welfare and pension programs (Ex. 4, p. 83), centralized pay offices (Tr. 343), and safety and accident bureaus to establish uniform industry-wide safety practices (Tr. 345). Some of

13. 45 U.S.C. §§ 151-163, 181-188.

these facilities are the only ones existing in the industry (Tr. 395); others are duplications of like facilities maintained by individual members (Tr. 345), and as such present duplicate and unnecessary costs for them. The Association's activities and the facilities maintained by it are costly. Necessarily, the members have agreed upon assessments each must bear to cover these costs. Indeed, when confronted with the costs of the Mechanization Plan, the PMA members determined to finance the employee benefits in the same manner in which they had determined their membership assessments for decades (FMC p. 2; L.D. p. 11; Ex. 5-A, p. 5).¹⁴ Finally, in order to assure compliance with the labor policies and programs established by their collective action within PMA, the members have adopted a system of fines which are intended to dissuade unilateral action undermining the collective programs.¹⁵

All of these actions, openly engaged in for decades by members of the industry who are subject to the Shipping Act, 1916, have required numerous agreements, understandings, and undertakings among themselves, *regardless of whether the unions with which PMA negotiated were direct parties thereto*. At no time were these collective actions, none of which is distinguishable from the collective actions whereby the funding arrangements for the Mechanization Plan were established, submitted to the Commission for approval. The industry did not seek such approval because no one has in fifty years conceived that the Shipping Act, 1916 in any fashion whatsoever applied to the collective

14. The funding arrangements adopted by PMA were modeled after the method by which dues had been collected because this method had proved administratively practicable (Tr. 51-53, 89, 95, 102-105, 107-111, 363-368, 380-397; Ex. 5-A, pp. 4-8).

15. Ex. 3, pp. 26-34.

or individual actions of members of the industry in managing their labor-management relations.

If petitioner believes that an unequal distribution of the labor costs of a PMA program serves to distinguish the funding arrangements adopted for the Plan from other collective action of the Association, then petitioner is simply misinformed about the realities of industry-wide bargaining. Mr. St. Sure's unrefuted testimony, based on the experience of a lifetime as the representative of various industries, unequivocally establishes that unequal distribution of the benefits and costs resulting from an industry labor contract is the natural and anticipated consequence of the collective bargaining process when it is maintained on an industry-wide basis (Tr. 388-93, 413-415). This well-known result of industry-wide bargaining has, perhaps more than any other, caused some legislators to be concerned that national policies protecting and assuring competition were being undermined as a consequence of the national labor policies fostering and protecting¹⁶ industry-wide bargaining.¹⁷ Other legislators hold contrary views¹⁸ and, to date, they have prevailed in Congress.¹⁹

We doubt that petitioner seriously intends to distinguish the collective action of PMA members in providing for the funding of the Plan from other collective actions undertaken to establish and implement labor policies and collective agreements. Otherwise, petitioner would not have

16. E.g., The NLRB has recognized the PMA group as the appropriate bargaining unit for which ILWU is the certified representative of the longshore employees employed by members of the group. *In the Matter of the Shipowners Ass'n of the Pacific Coast, et al.*, 7 N.L.R.B. 1002 (1938).

17. See, 93 Cong. Rec. May 12, 1947, p. 5144.

18. See, 93 Cong. Rec. March 10, 1947, p. 1899.

19. *NLRB v. Truckdrivers Local 419, supra.*

adopted the extravagant position that the Congressional purpose in enacting the Shipping Act, 1916 was to submit "all collective" or "concerted" action of members of the maritime industry to the "surveillance" and "scrutiny" of the FMC (Op.Br. pp. 21, 24, 26). This position leads to the startling result that the collective bargaining processes of the maritime industry are to be restricted in a fashion that Congress has refused to impose on other industries. It has been repeatedly recognized by the Supreme Court that Congress has provided the "parties" to the bargaining process with "wide latitude in their negotiations, unrestricted by any governmental powers to regulate the substantive solutions of their differences."

See, *NLRB v. Insurance Agents' International*, 361 U.S. 477, 488-90 (1960);

See also, *Local 24 et al. v. Oliver*, 358 U.S. 283, 295-6 (1959).

It is the exercise of this latitude of discretion by the members of PMA in developing and implementing the Mechanization Plan that petitioner challenges. Petitioner not only wishes to involve FMC in this process, but also proclaims that "substantive solutions" acceptable to the parties are unacceptable when viewed in the light of the Act. This is demonstrated by the fact that Commissioner Patterson was mistakenly led to the belief that man-hours would be the only acceptable method for distributing the labor costs of the Plan, notwithstanding that the ILWU as well as the members of PMA consider the tonnage assessment condemned by petitioner and Commissioner Patterson as appropriate for funding the employee benefits of the Plan.²⁰

20. See, FMC, pp. 59-60; cf. Tr., pp. 384-386.

We do not maintain that Congress by enacting the NLRA repealed or modified any provisions of the Shipping Act, 1916. Nor is there any legal basis for urging that business enterprises may under the guise of settling labor-management relations engage in monopolistic and anti-competitive practices.²¹ See, e.g. *Allen Bradley Co. v. Local 3, International Brotherhood of Electrical Workers*, 325 U.S. 797 (1945). We do maintain, however, that given the unusual construction of the Act asserted by petitioner, the Commission and this Court must be presented with compelling authority before a construction may be adopted which is so at odds with fundamental national labor policies and would disrupt the sensitive and volatile bargaining processes of the maritime industry. In the absence of judicial and administrative authority²² supporting its extravagant con-

21. Woven as a red thread through petitioner's brief is the suggestion that PMA and its members have engaged in conduct with the ILWU which constitutes a violation of the Sherman Act and principles of *Allen Bradley Co. v. Local 3, International Brotherhood of Electrical Workers*, 325 U.S. 797 (1945). We unqualifiedly deny these charges. The Trial Examiner and FMC refrained from considering these charges, which present factual and legal issues under legislation over which the Commission's regulatory jurisdiction does not extend.

22. In such cases as have been concerned with the meaning of the term "cooperative working arrangement" as used in Section 15, the rule of *eiusdem generis* has been applied to determine the content of the phrase, or it has been assumed that it was included in the Act to preclude avoidance of the regulation of the specific practices enumerated in the section by the "manner" in which the prohibited understanding was reached. See, *Unapproved Section 15 Agreements—South African Trade*, 7 F.M.C. 159 (1962); *Unapproved Section 15 Agreements—North Atlantic Spanish Trade*, 7 F.M.C. 337 (1962); *Puget Sound Tug & Barge Co. v. Foss Launch & Tug Co.*, 7 F.M.C. 43 (1962); *Unapproved Section 15 Agreements—West Coast South American Trade*, 7 F.M.C. 22 (1961); *Maatschappij "Zeetransport" N.V. (Orange Line) v. Anchor Line Ltd.*, 6 F.M.B. 199, (1961); *In the Matter of Wharfage Charges & Practices at Boston, Mass.*, *supra*; *American Union Transport v. River Plate Brazil Conference*, 5 F.M.B. 216 (1957), *aff'd sub. nom.*; *American Union Transport v. United States*, 103 App. D.C. 229, 257 F.2d 607 (1958) cert. denied, 358 U.S. 828 (1958); *Associated-Banning Co. v. Matson Nav. Co.*, 5 F.M.B. 432 (1958).

struction of the Shipping Act, 1916, petitioner has attempted to distill from the legislative history of the Act support for its position (Op. Br. pp. 24-26, 35-36). This was a fruitless undertaking.

The Shipping Act, 1916 was enacted during the first Wilsonian administration when the national concern was with anti-competitive and monopolistic trade practices. The language of the Act, the Alexander Report, and legislative debates establish that Congress in 1916 was concerned with the abuses in ocean transportation that had been the subject of frequent complaint by shippers.

Congress accordingly was concerned (1) with regulation of steamship rate-making conferences, and (2) prevention of discriminatory trade practices in the furnishing of ocean transportation, including the furnishings of terminal facilities. In each instance, Congress' attention was focused solely on trade practices affecting transportation of property across the oceans in the foreign commerce of the United States, or, as the Examiner has so aptly phrased it, "the regulation of ocean transportation" (I.D. p. 30). In carrying out its regulatory plan Congress prohibited some trade practices, such as the use of fighting ships (46 U.S.C. § 812). Recognizing certain anti-competitive agreements as beneficial to the public interest if drawn in accord with that interest, Congress took a different tack in Section 15. It recognized that anti-competitive agreements covering listed subjects could be continued under the scrutiny of a public body. Unquestionably, the principal agreements in this category were those establishing rate-making conferences.

At this juncture in our history Congressional concern with the existence of uniform labor costs within an industry was to establish that disputes concerning labor costs did not present questions within the scope of national antitrust

policies. Hence two years before enactment of the Shipping Act, Congress had declared in the Clayton Act that "the labor of a human being is not a commodity of commerce."²³ By this declaration, Congress recognized that activities affecting the cost of labor were not governed by the national antitrust policies, regardless of the ultimate effect on prices.

See, *Kennedy v. Long Island R.R. Co.*, *supra*;
Cox, Labor and the Antitrust Laws—A Preliminary Analysis, 104 U. of Pa. L. Rev. 252, 277-78 (1954);
Cf. Apex Hosiery Co. v. Leader, 310 U.S. 469 (1940).

Congress would hardly have taken this momentous step in 1914 and then in 1916, without comment, weave into the interstices of Section 15 a limitation upon the collective action in which the shipping industry may engage when establishing the costs of maritime labor.

The interest and concern which Congress has shown in later years in maritime labor problems demonstrates that Congress does not intend to regulate any aspect of labor-management relations of the industry by the Shipping Act, 1916. The need to protect wage standards of American seamen motivated Congress, in part, to provide for operating differential subsidies in the Merchant Marine Act, 1936.²⁴ In 1938 Congress added to this legislation Title X,²⁵ in an effort to find a solution to the many labor disturbances prevailing in the industry. Title X remained in effect for a period of four years and provided for the establishment of a Maritime Labor Board. The duties of this Board are revealing.

23. 15 U.S.C. § 17.

24. 46 U.S.C. § 1171 et seq.

25. Pub. Law 705, 75th Cong. 3rd Sess., Ch. 600 §§ 45 et seq.; Merchant Marine Act, 1936 §§ 1001-1012.

The Maritime Labor Board was charged with the responsibility of investigating labor-management relations within the maritime industry and rendering assistance to "representatives of a maritime employer or employers or its or their employees," in negotiating and administering labor agreements. Title X expressly stated that its provision shall not "in any manner affect or be construed to limit the provisions of the National Labor Relations Act" or "constitute a repeal or otherwise affect the enforcement of any of the navigation laws of the United States or any other laws relating to seamen." If Congress had considered the Shipping Act, 1916 in any way related to labor-management matters, a like reference to the Act would have undoubtedly been included.

In 1940 the Maritime Labor Board reported to the President and Congress the results of its study of the operations of the collective-bargaining processes within the maritime industry.²⁶ A chapter of the Report was devoted to a description of the many maritime employers' associations then in existence, and it presented a discussion of their contribution to the collective bargaining process of the industry. The Board did not suggest that the existence of these associations, or their extensive operations with their effect on maritime labor costs which, in turn, had an effect on charges of the industry to the public, in any fashion violated the Shipping Act, 1916. Nor did the Board suggest that the activities undermined, or threatened in the future to undermine the policies of that Act. If petitioner's position were credible, one must conclude that the Maritime Labor Board failed to grasp the significance of the activities of the employers' organizations studied by it, for there has been no change in operations as they were conducted in 1940 and the

26. Maritime Labor Board. Report to the President and to the Congress (1940).

manner in which the members of PMA in 1961 arranged for the funding of the Mechanization Fund.

The Shipping Act, 1916 has, of course, been reviewed by Congress during the last fifty years. Recent reviews of the Celler Committee²⁷ and the hearings²⁸ before both Senate and House in relation to the Dual Rate Act in 1959 and 1961 have been exhaustive. At this time it was also common knowledge—indeed, it was assumed without question—that organizations like PMA and the activities of their members (many of whom are persons covered by the Act) within these organizations in establishing uniform labor costs and promulgating and enforcing labor policies were not subject to the Commission's jurisdiction under Section 15. It has also long been common knowledge that the activities of such organizations result in costs which the industry must somehow recover. Indeed, Congressional hearings were in process when the Mechanization Plan was being negotiated and the funding methods challenged by petitioner were adopted. These developments enjoyed nationwide publicity. Yet, there is no indication that Congress or the hundreds of witnesses appearing before it ever found a relationship between the Shipping Act, 1916 and these developments. Only petitioner sees this relationship.

There is no reasonable basis for concluding that Congress in 1916, or more recently, fancied that the Shipping Act,

27. Hearings before Antitrust Subcommittee of the Committee of the Judiciary, House of Representatives, 86th Cong. 1st Sess. (1959).

28. Hearings before Special Subcommittee on Steamship Conferences of Committee on Merchant Marine and Fisheries, House of Representatives, 86th Cong. 1st Sess. (1959) Steamship Conference Study; Hearings before Merchant Marine and Fisheries Subcommittee of the Committee of Commerce, U.S. Sen., 87th Cong. 1st Sess. on H.R. 6775 Steamship Conferences/Dual Rate Bill (1961); Hearing before Special Subcommittee on Steamship Conferences of the Merchant Marine and Fisheries, House of Representatives, 87th Cong. 1st Sess. on H.R. 4299 (1961).

1916, designed to remedy discriminatory trade practices in ocean transportation, subjected any aspect of the shipping industry's labor-management relations to the Commission's jurisdiction. It is unreasonable to assume that, at such times as the Act was being reviewed by Congress, the industry, the powerful unions involved, or shippers could have remotely conceived that the Act applies as asserted by petitioner and, in the face of such conception, maintain an absolute silence on the subject during the endless testimony and debates before Congress. This silence compels, we respectfully submit, one conclusion: The FMC determination that Section 15 does not apply in this litigation must be affirmed.

II. The Record Supports the FMC Finding of Fact That the Members of PMA Did Not Agree as to How Their Respective Charges to Customers Would Be Determined.

The heart of petitioner's position in this litigation is presented in Point II of its brief. It maintains that the stevedore contractors and members of PMA who were directly responsible, as employers of longshoremen and marine clerks, to cover the costs of the Plan were mere "conduits", and that it was understood among the members of the Association that these costs would be assumed by carriers who were members of the Association (Op. Br. p. 36). With respect to nonmembers, such as itself, who are customers of PMA members, petitioner asserts that the labor costs were fixed so as to require stevedore contractors and terminal operators to pass these costs on to nonmembers served by them (Op. Br. p. 37).

Obviously, the existence or nonexistence of such agreements, arrangements or understandings presents only questions of fact. The FMC has resolved these questions by finding that no such agreement or understanding existed (FMC

p. 9). The question for this Court is whether the record presents substantial evidence to support the FMC finding. Petitioner does not deny the existence of the evidence upon which FMC relies but presses upon this Court the same evidence and arguments which were not persuasive to either the Commission or the Trial Examiner.

The Supreme Court in *Consolo v. FMC*, . . . U.S. . . . 34 L.W. 4278 (March 22, 1966), however, made clear that a litigant's dissatisfaction with how an agency weighed the evidence does not establish that its findings are unsupported by substantial evidence. Whether the record may have supported contrary findings is not within the province of this Court to decide. The Supreme Court stated:

"In effect, the standard of review applied and articulated by the Court of Appeals in this case was that if 'substantial evidence' or 'the substantial evidence' supports a conclusion contrary to that reached by the Commission, then the Commission must be reversed. This standard is not consistent with that provided by the Administrative Procedure Act.

"Section 10(e) of the Administrative Procedure Act (5 U.S.C. § 1009(e) (1964 ed.)) gives a reviewing court authority to 'set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, [or] an abuse of discretion . . . [or] (5) unsupported by substantial evidence. . . .' Cf. *United States v. Interstate Commerce Commission*, 198 F.2d 958, 963-964, cert. denied, 344 U.S. 893. We have defined 'substantial evidence' as 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' *Consolidated Edison Co. v. Labor Board*, 305 U.S. 197, 229. '[I]t must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.' *Labor Board v. Columbia Enameling & Stamping Co.*, 306 U.S. 292, 300. This is something

less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. *Labor Board v. Nevada Consolidated Copper Corp.*, 316 U.S. 105, 106; *Keele Hair & Scalp Specialists, Inc. v. FTC*, 275 F.2d 18, 21.

"Congress was very deliberate in adopting this standard of review. It frees the reviewing courts of the time-consuming and difficult task of weighing the evidence, it gives proper respect to the expertise of the administrative tribunal and it helps promote the uniform application of the statute."

This Court has applied this standard in the past when reviewing orders of the Commission. In *Alcoa Steamship Company v. Federal Maritime Commission, supra*, the court affirmed an order approving a pooling agreement, saying:

"These findings by the Commission represent its best effort to measure the effects of the agreement in relation to petitioners. They are supported by substantial evidence in the record, and we have no basis for rejecting them without substituting our judgment in this specialized area for that of the body best qualified to exercise it." (321 F. 2d at p. 760).

States Marine Lines v. FMC, 99 U.S. App. D.C. 312, 313 F.2d 906, 908 (1963), cert. denied, 374 U.S. 831 (1963), is in accord.

FMC in determining that there was no "additional agreement by the PMA membership to pass on all or a portion of its assessment to the carriers and shippers served by the terminal operators" was compelled to this finding by the appreciation that "the record is *devoid* of evidence showing the existence of such an additional agreement" (emphasis added). FMC recognized that witnesses had affirmatively denied the existence of such an agree-

ment, and that the existence of such agreement was "vitiated by the actions of respondents . . . who were willing to absorb a part of the assessment."²⁹ FMC concluded that in order to agree with petitioner it would "be obligated to reach the anomalous result of finding an agreement in spite of both testimony and conduct negating such an agreement, and then finding that such conduct was a breach of the agreement." It refused to reach such a "contrived" result. (FMC p. 9).

The evidence upon which FMC relies is substantial support for its conclusion. It might have added, if further support for its conclusions had seemed necessary, that the absence of any evidence in the record of increases in rates in the published tariffs of marine terminal operators dispelled petitioner's claim that the costs of the Plan to the employers of clerks and stevedores, and carriers subject thereto, were to be "passed on" to their customers. The evidence³⁰ establishing that the carriers had not increased their rates subsequent to the adoption of the Plan indicates that they had not, apparently, incurred automatic increases in stevedore costs, which increases would have increased the carriers' costs of operation and induced the carriers to increase their charges, in petitioner's view of the record.

Finally, the unchallenged findings³¹ of the Trial Examiner that the Plan provided solely as to how costs thereof were to be divided among the employers of clerks and longshoremen, and that PMA "did not direct any member as to how

29. Tr. 162, 399 (there is no contradictory testimony); Tr. 246, 308-309 (petitioner does not challenge this testimony).

30. Tr. 161. It is noteworthy that a common carrier which carries some of petitioner's cargoes was not required to increase rates because of increases in costs derived from the Plan (Tr. 325).

31. *Supra*, pp. 6-7.

it was to handle the assessment" disposes of petitioner's efforts to twist such directions out of PMA communications to members which are isolated from the context in which they were issued. These findings are supported by contract documents and unrefuted testimony.³²

There is no mystery as to why a uniform increase in rates did not result: the purpose of the Plan was to secure a reduction in the costs of cargo-handling which would ultimately permit a reduction in the industry's charges to the public (Tr. 398). The "liner interests", who in petitioner's view dominate the affairs of PMA, would have been fools indeed if they had participated in the establishment of a Plan that by its operative terms required them to reimburse their stevedore contractors for their costs under the Plan while these same stevedore contractors pocketed substantial savings as wages were reduced by the elimination of featherbedding practices. That no such foolish understanding existed in the industry is demonstrated by the response of American President Lines to the Plan: it promptly canceled its stevedore contracts and commenced a comprehensive review of cargo-handling charges with the intention of securing a reduction in rates (Tr. 162-164).

We do not maintain that the labor cost incurred by employers of longshoremen and marine clerks as a consequence of their participation in the Mechanization Plan, unlike other labor costs, would not be reflected in their respective charges to customers. Of course these labor costs like all other labor costs must be recovered or bankruptcy will soon result. The members of PMA are aware of this economic axiom. They know that all labor costs—straight-time and overtime wages, penalty charges, and the costs of welfare, pensions, vacations, as well as mechanization benefits

32. Ex. 1-C. Art. II, Sec. 2; Art. III, Sec. 4(a); Tr. 399, Ex. 20.

—will be reflected in stevedore charges and terminal rates.

Such knowledge, however, does not serve as a premise for reasoning to a conclusion that the members who are customers of the stevedore contractors necessarily understood that they would reimburse their contractors for whatever amounts they were obligated to contribute to the Mechanization Fund. Petitioner's whole case is based on an assumption that such an understanding existed.

But, the costs of the Plan are only one labor cost to be reflected in rates and, as petitioner's statistics disclose, they would be less significant than direct wages. The Plan provided an unusual opportunity to revolutionize cargo-handling and reduce overall labor costs (Tr. 388-392). How each stevedore contractor would exploit this opportunity was dependant upon many unknown factors varying from company to company: experience with a wide variation of cargo-handling operations, availability of skilled and imaginative supervisory personnel, morale and willingness to respond to challenges, and a willingness to make substantial capital investments in new machinery and modern efficient facilities in reliance upon the proclaimed ILWU intention to abandon its generation-old battle with the "machine." It is these factors which account for the highly competitive nature of the longshore industry, notwithstanding that labor costs are determined under uniform rates prevailing on the entire coast. It is hardly likely that the knowledgeable members of PMA would have established the stevedore contractors as "conduits" to pass on to the carriers their costs under the Plan, thereby foregoing a spur to induce the stevedore contractors to modernize, after spending four years in seeking the consent of the ILWU to revolutionary changes. We do not doubt that the FMC, familiar as it is with the operations of the shipping in-

dustry, could not credit an argument which rests on such an unrealistic assumption.

Petitioner obscures the shallowness of its case by presenting itself as a victim of a conspiracy of ruthless vested interests. It asserts that PMA is controlled by "liner interests" that have no opportunity of carrying petitioner's cargoes and who, therefore, were stimulated to shift the burden of their obligation to amass twenty-nine million dollars to petitioner. This has been accomplished, petitioner maintains, by adoption of funding arrangements designed deliberately to place a disproportionate cost of the Plan upon its long-shore operations while favoring those PMA members.

This fanciful theory has been urged throughout these proceedings. In view of the whole record, the Trial Examiner and Commission refused to accept petitioner's conception of the conduct of the PMA membership in implementing their contract obligations under the ILWU-PMA Mechanization Agreement. The *Consolo* decision makes clear that petitioner is not entitled to a re-weighing in this Court of the evidence which failed to persuade FMC to endorse petitioner's views. Therefore, a point-by-point answer, at this juncture, of why petitioner's views must be rejected would be redundant and waste valuable judicial time. However, in order to forestall any slurs suggesting that PMA cannot answer petitioner's claims, we have set forth in Appendix I an analysis of petitioner's theories together with references to the evidence that establishes facts incompatible with adoption of these theories. Our analysis shows that petitioner's cloak-and-dagger version of the events from which the Mechanization Plan emerged depends upon tearing pieces of evidence from their context as support for its views. It has in this Court for the first time

charged the industry's representatives with conduct impugning the Commission's subpoena processes.³³

FMC was not impressed by such tactics and rejected petitioner's view of the record.³⁴ FMC found on the basis of

33. Petitioner has footnoted in its brief (p. 13) a serious charge that PMA did not provide all relevant documents in response to the Commission's subpoena. In support of this charge petitioner states many documents produced provide "internal evidence" of further relevant documents not produced. The only example cited (Ex. 21, p. 3) provides absolutely no basis for such a charge; the cited exhibit discloses no "report" concerning "the first six months experience", except the oral estimates concerning the adequacy of PMA assessments, which were made by Kenneth Saysette and which are reported in the regular course of business in the immediately preceding exhibit (Ex. 20: Draft Minutes of Meeting of Committee on Work Improvement of Aug. 1, 1961, at p. 4). The charge of bad faith cannot be proved from the record, and is also false. At the deposition of Kenneth Saysette at which the PMA records were produced, PMA's counsel, signing this brief, volunteered to allow petitioner's counsel any further examination of documents desired and, in fact, many documents produced were not even marked by petitioner's counsel. To charge bad faith now, after the record is closed, is merely another attempt to create false clouds of suspicion in support of a far-fetched theory of conspiracy.

34. It may only be a credit to opposing counsel's skills of advocacy that Commissioner Hearn, while not disagreeing with the legal principles applied by his fellow-commissioners, disagreed as to "the reading" to be given the record. His "reading" of the record was induced by the unrealistic stress placed by petitioner on self-serving statements, quoted out of context, of those members who are petitioner's stevedore contractors. Briefs of MTC make clear that these contractors are in an unenviable position: they were, and are, on the one hand, delinquent in contributions required under a labor contract and risk job action by ILWU on all operations and PMA fines, as long as these delinquencies continue; on the other hand, petitioner was a valued customer which these stevedores wished to retain by giving assurances of sympathy and support for its cause. Understandably, these contractors wished to establish an apparent neutrality and, therefore, described themselves as "conduits" and "collection agencies." PMA did not acquiesce in this view of their obligations, as is made clear by the unshaken testimony of the President of PMA and the recommendations of the Funding Committee that fines be imposed on delinquent stevedore contractors (Tr. 399-400 direct examination; cf. 416 cross-examination; Ex. 20). Further, Commissioner Hearn did not recognize the responsibilities owed by a collective bargaining asso-

substantial evidence that PMA members had neither agreed among themselves nor established the Plan to constitute stevedore contractors a "conduit" or "collection agency" by which their labor costs under the Plan could be "passed on" to and assumed by their customers. We are confident that this Court, following the teachings of the *Consolo* decision, will agree with FMC and affirm its conclusion that an agreement within Section 15 does not exist.

III. FMC Correctly Determined on Substantial Evidence That a Violation of Section 16 of the Shipping Act, 1916 Had Not Been Established.

Section 16 of the Act (46 U.S.C. § 815) makes it unlawful for a "person" subject to the Act "to give any undue or unreasonable preference or advantage to any particular person . . . or description of traffic or to expose any person or traffic to undue or unreasonable prejudice or disadvantage...."

Long ago predecessors of the Commission determined from their experience with the administration of the Act,

ciation to its members. Naturally, the Association, when aid and "moral support" are solicited by a member, must assume the legal defense of the Association's conduct. However, when charges of illegality are also leveled at the member's conduct without regard to the legality of the Association's conduct, then the Association should not jeopardize its legitimate claims by undertaking the defense of a suit which may turn on the legality of conduct for which only the member is responsible. Confronted with this situation, PMA authorized its counsel to sue its delinquent members for collection of the assessments due from them. It is not surprising that counsel was anxious to have an escrow established to protect PMA and would, as an abbreviated description of the obligations owed by stevedores as a consequence of their employment of longshoremen to work Volkswagenwerk's cargoes, refer to such obligations as being due "on behalf of Volkswagenwerk." This Court will not, we are sure, be impressed with Commissioner Hearn's mis-reading of the record. At page 21, *supra*, of the text, we have already explained why the mistaken legal theories that underlie Commissioner Patterson's views of this litigation must be rejected.

that Section 16 was not applicable unless "competitive cargo" has been preferred.

Boston Wool Trade Ass'n v. Merchants & M.T. Co.,

1 U.S.S.B. 24, 30 (1921);

Picket Rope Co. v. Dallas S.S. Lines, Ltd., 1 U.S.S.B.

585 (1936);

Paraffine Companies, Inc. v. American-Hawaiian S.S.

Co., 1 U.S.M.C. 628 (1936);

Pacific Lumber & Shipping Co. v. Pacific-Atlantic

S. S. Co., 1 U.S.M.C. 624 (1936);

Port of Philadelphia Ocean Traffic Bureau v. Export

S.S. Corp., 1 U.S.S.B. 538, 541 (1936);

Tri-State Wheat Transp. Council v. Alameda Transp.

Co., 1 U.S.M.C. 784 (1938);

Celotex Corp. v. Mooremack Gulf Lines, 1 U.S.M.C.

789, 792 (1938);

Huber Mfg. Co. v. N. U. Stoomvaart M. Wedeiland,

4 F.M.B. 343 (1953).

That this is not just some forgotten principle is demonstrated by decisions of the present Commission in 1962 and again in 1965:

West Indies Fruit Co. v. Flota Mercante, 7 F.M.C.

66 (1962);

Imposition of Surcharge on Cargo to Manila. 5 S.S.R.

788 (Pike & Fischer 1965).

In both cases the Commission discussed this principle and reaffirmed the consistent decisions of its predecessors.³⁵

35. Against this long line of consistent decisions petitioner points to two cases where courts upheld violations of Section 16 found by the Commission "without ever exploring what the impact of such practices were upon competition" (Op. Br., p. 40). Both cases,

The record does not disclose any difference in treatment of competitive cargoes. Petitioner formerly conceded, and does not now deny, that the labor costs under the Plan of contractors handling all other foreign or domestic automobiles are determined in the identical manner as are the labor costs of petitioner's contractors. Also, petitioner formerly conceded that administrative decisions had established that the showing of the granting of preferences amongst competitive shippers was required for a violation of Section 16.³⁶

Now, encouraged by Commissioner Patterson's misunderstanding of the record, petitioner urges this Court to sweep aside a settled administrative construction of the Act. The judicial authorities heretofore cited³⁷ make clear that this Court requires the showing of fundamental error before upsetting the Commission's determination. The very generality in which the proscriptions of Section 16 are cast demonstrates that "broad latitude" in the exercise of administrative expertise and discretion is required for the enforcement of Section 16.

however, involved situations where all cargo owners were subject to indiscriminate different charges "in random fashion" so that it took no proof to know as a fact that the same type of cargo but of different owners was charged differently for the same service. Hence, in *California v. United States*, 320 U.S. 577 (1944) lack of uniformity in free time could affect the same class of cargo differently. In *New York Foreign Freight Forwarders & Brokers Ass'n v. Federal Maritime Commission*, 337 F. 2d 289 (2d Cir. 1964), cert. denied, 380 U.S. 914 (1965) the court found "forwarders, in random fashion, charge shippers disguised markups of widely varying amounts for no apparent reason . . ." and that "forwarders render substantially the same service to all shippers" (*supra* at p. 299). *Ipso facto* competitive cargo would be prejudiced in these situations.

36. FMC p. 9. Petitioner does not now challenge the FMC description of its earlier admissions.

37. *Supra*, p. 16.

The cases relied on by petitioner, both of which involve conduct unrelated to the circumstances presented by this litigation, were available to the Commission; it did not deem them incompatible with its settled construction of the Act.³⁸ Moreover, as earlier discussions make clear,³⁹ the conduct of PMA members in providing a method for funding the Plan does not involve the giving of preferences or advantages to shippers. It merely establishes one item of cost attendant with the hiring of dock-workers. Hence, before petitioner may present any case under Section 16, it must first establish as a fact that PMA members agreed that such labor cost would automatically be passed on to carriers and shippers as an additional charge. As we have shown in Section II, FMC correctly decided no such "agreement", "understanding" or "arrangement" existed. We submit that the Commission's conclusions under Section 16 of the Act must also, therefore, be affirmed.

IV. The FMC Determination That a Violation of Section 17 of the Shipping Act, 1916 Was Not Established Is Supported by Substantial Evidence.

Section 17 of the Act (46 U.S.C. § 816) proscribes any "regulation or practice" connected with the "receiving, handling, storing or delivery of property" which a "person" subject to the Act shall "establish", "observe" or "enforce" when the Commission finds that such practice is "unjust or unreasonable" FMC refused to find on the record that either MTC or members of PMA⁴⁰ had engaged in any "unjust or unreasonable" practice "by attempting deliberately to burden one . . . [service] more than another." FMC

38. See footnote 35, *supra*.

39. *Supra*, pp. 13-14, 19; See also, Appendix I, *infra*, p. 1.

40. Clearly, PMA, the Association, is neither a carrier nor an "other person" under the Shipping Act, 1916 (46 U.S.C. § 801).

on the record positively found no unjust or unreasonable practice existing. The initial argument of petitioner under Section 17 is precisely that condemned by the Supreme Court in the *Consolo* case, *supra*. It argues that the Commission, in reaching its conclusions, on the facts could have reached a different result by giving more weight to other evidence (Op. Br. p. 42). The Supreme Court, however, has made clear that the standard of review is *not* whether "substantial evidence" supports a conclusion contrary to that reached by the Commission."

At one time there may have been question whether petitioner's charges under Section 17 involved conduct on the part of MTC that was unrelated to its participation in labor programs developed by PMA; it is now clear that petitioner's case under Section 17 is merely a restatement of its unsupportable claims under Section 15.

Petitioner presents the following syllogism: practices which derive from illegal conduct are *ipso facto* "unjust" and "unreasonable"; the participation of MTC in PMA by not terminating its membership because of the funding arrangements adopted by the membership, and by accepting its obligations to contribute to the Mechanization Fund pursuant to the provisions of the ILWU-PMA Mechanization Agreement are cited, apparently, as illegal conduct; therefore, petitioner maintains that when MTC seeks to recover in commodity rates negotiated privately with petitioner the labor costs incurred by MTC under ILWU-PMA contracts, MTC is engaging in an "unjust and unreasonable" practice (Op. Br. p. 42). The flaw in this syllogism is obvious: FMC found that the conduct of the PMA membership, including MTC, in negotiating and implementing the Mechanization Plan, is not unlawful under Section 15.⁴¹

41. Petitioner's suggestion that illegality under the Sherman Act has been established is palpably absurd. A record developed

Disregarding the fractures in the seams of its argument, petitioner sails into troubled waters. Apparently assuming the legality of the acts previously characterized as illegal, petitioner then invokes various decisions involving rate structures promulgated in published tariffs by public marine terminals. Petitioner, again asserting that the record discloses it did not receive benefits available to other members of the industry, asserts that MTC seeks to include in charges quoted to petitioner a disproportionate portion of the costs derived from the participation by MTC in the Mechanization Plan (Op. Br. pp. 45-48).

Petitioner's casual dismissal of the benefits to its operation from avoiding a strike on the grounds that others enjoyed the same benefit does not conceal the special and very substantial benefits inuring to petitioner. It is the operators and charterers of the largest fleets and shippers of the great-

for the sole purpose of determining whether violations of the Shipping Act, 1916 occurred will not serve to support a determination that Sherman Act violations have also occurred when the factual and legal basis for such charges have been persistently and unqualifiedly denied. *Carnation Co. v. Pacific Westbound Conference* ___ U.S. ___, 34 L.W. 4181 (Feb. 28, 1966) is not to the contrary. That case arose in the federal district court and involved only causes of action arising under the Sherman and Clayton Acts. It reached the Supreme Court on appeal from an order dismissing the action. Respondent maintained that the conduct involved was within Section 15 and for the purpose of its motion conceded the approval of FMC had not been obtained. The Supreme Court held that whether the alleged conduct was within and already approved under Section 15 presented questions for determination by FMC in exercise of its exclusive primary jurisdiction; that the district court action should be held in abeyance pending a final determination, but that the district court could proceed on its action arising under the Sherman Act when the FMC determination had been finally rendered. Certainly the case has no relevance to a suit where charges of misconduct under the Shipping Act have not been established and the allegations of Sherman Act violations are denied. Certainly the Supreme Court would not condone a denial of elementary due process entitling PMA and MTC to a hearing by a body properly constituted to try causes arising under the Sherman Act.

est volume of cargo who secure the greatest advantage when ships are not tied up and access to prized market places is not blocked by a strike.⁴² Understandably, the "precise equivalence" between the advantages gained from avoidance of a strike and the price of a peaceful settlement cannot be determined. FMC in *Evans Cooperage Co. Inc. v. Board of Commissioners of the Port of New Orleans*, 6 F.M.B. 415 (1961) made clear that precise equation of benefits gained and charges imposed is not required by Section 17 when a "precise equivalence" is impossible. In any case, the FMC conclusion that petitioner was benefited by the Plan, which is supported by the FMC reading of the record, presents a factual obstacle to acceptance of petitioner's construction of Section 17.⁴³

The very cases cited by petitioner raise legal obstacles. MTC charges, which petitioner challenges, relate solely to straight stevedore costs. Stevedore contracts, unlike tariffs of public terminals, are privately negotiated and are not open to the public (Tr. 214-217). Also, charges imposed by public marine terminals offering storage facilities and clerking services involve substantially different considerations than charges of stevedore contractors employing long-shoremen to discharge or load cargo. Counsel for MTC will brief, we understand, the legal reasons why its contracts with petitioner are not subject to Section 17 or any other provision of the Act. We shall limit this brief to the differences obtaining between a terminal's rates and costs under a labor contract.

42. Petitioner proudly asserts that it ships on vessels chartered by it the largest volume of general dry-cargo carried by private carriage to Pacific Coast ports (Op. Br. p. 3).

43. See testimony of the President of PMA concerning the educative process required to secure acceptance of the Plan by PMA members (Tr. 358-360, 383, 393-395). See also, Appendix I, *infra*, pp. 5-7 for analysis of additional benefits inuring to petitioner under the Plan.

A marine terminal provides services and also makes available to shippers and carriers wharves, warehousing and other facilities. The capital costs as well as the costs of maintaining the facilities are customarily spread through the terminal's rates. The decisions cited by petitioner merely require that this spread be accomplished in a reasonable manner, insofar as all "users" of the "facility" are concerned.

The Mechanization Plan is not a facility. It is a division of the ILWU-PMA Longshore Contract (Ex. 4, p. 83, Sec. 21). It establishes one item of compensation which parties subject to the longshore contract must pay when they employ longshoremen through the industry's hiring halls. MTC like all other stevedores employing longshoremen under this contract is obligated, when it orders gangs of dock workers to work a customer's vessel, to cover all costs of such employment that are fixed by the longshore contract. Such costs are *always* directly related to the work performed for the customer. There is, therefore, no need or basis for spreading such costs through rates charged to other customers serviced by other dock workers employed by the stevedore contractor. In fact, if Section 17 were applicable to stevedore contracts, the teachings of *Evan Cooperage Company, Inc. v. Board of Commissioners, supra*, as well as cases cited by petitioner, would preclude charging one customer for the labor costs incurred in servicing another.

We submit that the FMC correctly determined that unjust and unreasonable practices under Section 17 were not established and must, therefore, be affirmed.

CONCLUSION

When accusations removed from reality and devoid of legal basis are presented, there is always a natural inclination to search beyond the record for the underlying dispute.

That search in this litigation reveals a substantial, but *legally immaterial*, disagreement between the PMA membership and petitioner as to what constitutes an acceptable measure of the contribution attributable to the labor used in a longshore operation. It is this disagreement that has led petitioner to charge, contrary to the evidence, that PMA asserts and claims immunity from government surveillance over the exercise of a power to fix rates of carriers, terminal operators, and stevedore contractors, under the guise of settling wages and terms of employment for maritime employees, so as to penalize nonmembers and subsidize members. PMA has not exercised any such power. PMA does not seek such power. A rejection of petitioner's construction of the Shipping Act, 1916 will not confer any such power on the PMA membership.

What emerges from this record is the claim by PMA members of power unlimited by regulations imposed by the Shipping Act, 1916 to join together in collective bargaining associations for the purpose of negotiating and implementing collectively-bargained labor contracts in accordance with national labor policies established by Congress. In the exercise of that power PMA negotiated with ILWU a labor contract which was to produce overdue and salutary reductions in longshore costs while, at the same time, the dock workers were afforded protection from distress resulting from loss of work opportunities. Having concluded such Agreement, the PMA members were required by their continuing obligation to bargain in good faith to implement in a reasonable and practical fashion contract obligations. Otherwise, the PMA members would have been subject to condemnation by the NLRB or would have been deemed to have invited ILWU to refuse to implement its contract commitment to allow modernization of longshore operations.

The record does not support petitioner's charges that the funding arrangements were arbitrarily and capriciously developed to discriminate against its longshore operations. Instead, the record discloses that every effort was made by the industry to develop a reasonable and equitable method of funding the benefits of the Plan on a practical industry-wide basis that would not require the assertion by PMA of the comprehensive regulatory power which a funding method applied on a company-by-company basis would have necessitated. At the outset ILWU and PMA searched for a means of relating the costs of the Plan to the increased productivity to be achieved thereunder. This praiseworthy search failed to produce a reliable method for funding the Plan. It failed because the maintenance of collective bargaining on an industry-wide basis for a generation precluded development of reliable information as to the consequences of the provisions of the longshore contract on particular longshore operations in which a wide range of highly-variable factors could combine to produce materially disparate labor costs attendant with the handling of many types of cargo (Tr. 100-102, 373, 381-384).

Unable to produce a reasonable and practical measure for relating the costs of the Plan to prospective increases in productivity, the industry was reduced to a choice between funding the Plan on the basis of man-hours employed in, or on the basis of the volume of tonnage handled by, a longshore operation. Either method could be practically applied on an industry-wide basis. The industry's hiring halls and centralized pay-offices provide reliable information for determining the number of man-hours employed by each of the many operations comprising the longshore industry. The tonnage reports which had been required for a generation for the determination of PMA membership dues provided a reliable method by which the volume of

tonnage handled by each longshore operation could be established.

An industry-wide debate ensued as to the merits and demerits of each method of funding the Plan. This debate did not involve consideration of whether members or non-members of PMA would be benefited. It did not involve, as petitioner has asserted and failed to prove, consideration of the effect each funding method would have on particular longshore operations. The awareness of the PMA membership that the choice of one method would produce severe criticism from some contractors, like petitioner's, does not prove that the PMA membership knew that the criticism was valid. It does not establish that acceptance of the alternative choice for funding the Plan was not susceptible to more substantial criticism from other contractors.

The industry-wide debate centered on whether the Plan was likely to afford the same opportunities to all longshore operations to reduce those labor costs that continue to be fixed on a man-hour basis. Materially divergent views were held on that question. The industry recognized that automation of cargo-handling by use of containers and related cargo-handling equipment could not be achieved throughout the industry, and that some longshore operations were afforded more opportunities for automation than others because of the nature of the trades they serviced. It followed that, if the costs of the Plan were allocated on the basis of man-hours, those longshore operations most benefited by achieving a substantial reduction in man-hours would contribute least to the Plan. This result was unacceptable to a majority of the industry, and man-hours as a measure for funding the Plan was rejected. The only method remaining was the one adopted: contributions were

required on the basis of the volume of tonnage handled by each longshore operation. As the report of the Funding Committee (Exs. 5-A, 5-B) and testimony (Tr. 102-113; cf. 415) of its Chairman disclose, this method of implementing the contract commitments of the PMA membership was adopted because no other practical and equitable method could be developed. The manner in which resolution of this industry debate was resolved does not establish arbitrary and capricious action. Nor does it provide evidence of a preconceived conspiracy to victimize petitioner or other nonmembers.

Petitioner's dissatisfaction with the funding method adopted is understandable. Its longshore operations by having been relieved of make-work practices had succeeded in minimizing man-hours. These operations had achieved a high rate of production per man-hour. Self-interest naturally explains petitioner's preference for a man-hour measure, in lieu of a tonnage, for allocation of the labor costs of the Plan.

Petitioner's characterization of "manifested tonnage" as an "arbitrary yardstick" for the measure of the contribution of labor to a longshore operation is not understandable. Its correlative view urged in this litigation that the man-hour measure is the only reasonable and acceptable measure for the determination of labor costs is astonishing. From an employer's point of view, the most reliable measure of labor's contribution to an operation is productivity per man-hour, not the number of man-hours required. For this reason employers have generally favored piece-rates, of which the tonnage assessment by which the Mechanization Plan is funded is one example. Employers have feared and resisted, unsuccessfully, hourly rates as a basis for fixing compensation. They have argued that adoption of hourly rates encourages slow-downs and other make-work

practices, such as those which created the need for the Mechanization Plan.

The success of organized labor in overcoming employer resistance to hourly rates has now, in petitioner's view, resulted in a legal requirement for the allocation of labor costs under an industry-wide contract in the maritime industry. If petitioner's view were adopted, the members of PMA by their collective action could neither propose nor accept in collective bargaining negotiations any basis other than man-hours for determining the compensation of their employees. In such case the parties' ingenuity in developing means by which further de-casualization of maritime labor by adoption of a guaranteed annual wage plan and like programs, which are now being explored, would be materially circumscribed. Congress has refrained from imposing such limitations on the collective bargaining process. We are confident that this Court will not conclude that Congress has by indirection imposed on the maritime industry restraints that have been expressly rejected for all other industries in America.

Therefore, the FMC determinations that violations of Sections 15, 16 and 17 of the Shipping Act, 1916 were not established must, we respectfully submit, be affirmed.

Respectfully submitted,

EDWARD D. RANSOM
GARY J. TORRE
R. FREDERIC FISHER
LILLICK, GEARY, WHEAT, ADAMS &
CHARLES
311 California Street
San Francisco, California 94104
1625 K Street, N.W.
Washington, D.C. 20006

*Attorneys for Intervenor
Pacific Maritime Association*

Dated: April 29, 1966.

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the Answering Brief of Intervenor Pacific Maritime Association to be served upon all parties by causing copies thereof to be mailed, postage prepaid and properly addressed, to the following:

Richard A. Whiting, Esq.
Robert J. Corber, Esq.
Steptoe & Johnson
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

Walter Herzfeld, Esq.
Cecelia H. Goetz
Bernard J. Wald, Esq.
Herzfeld & Rubin
40 Wall Street
New York, New York 10005

Stanley J. Madden, Esq.
Pillsbury, Madison & Sutro
225 Bush Street
San Francisco, California 94104

William W. Schwarzer, Esq.
John Edward Hurley, Jr., Esq.
McCutchen, Doyle, Brown, Trautman & Enersen
601 California Street
San Francisco, California 94108

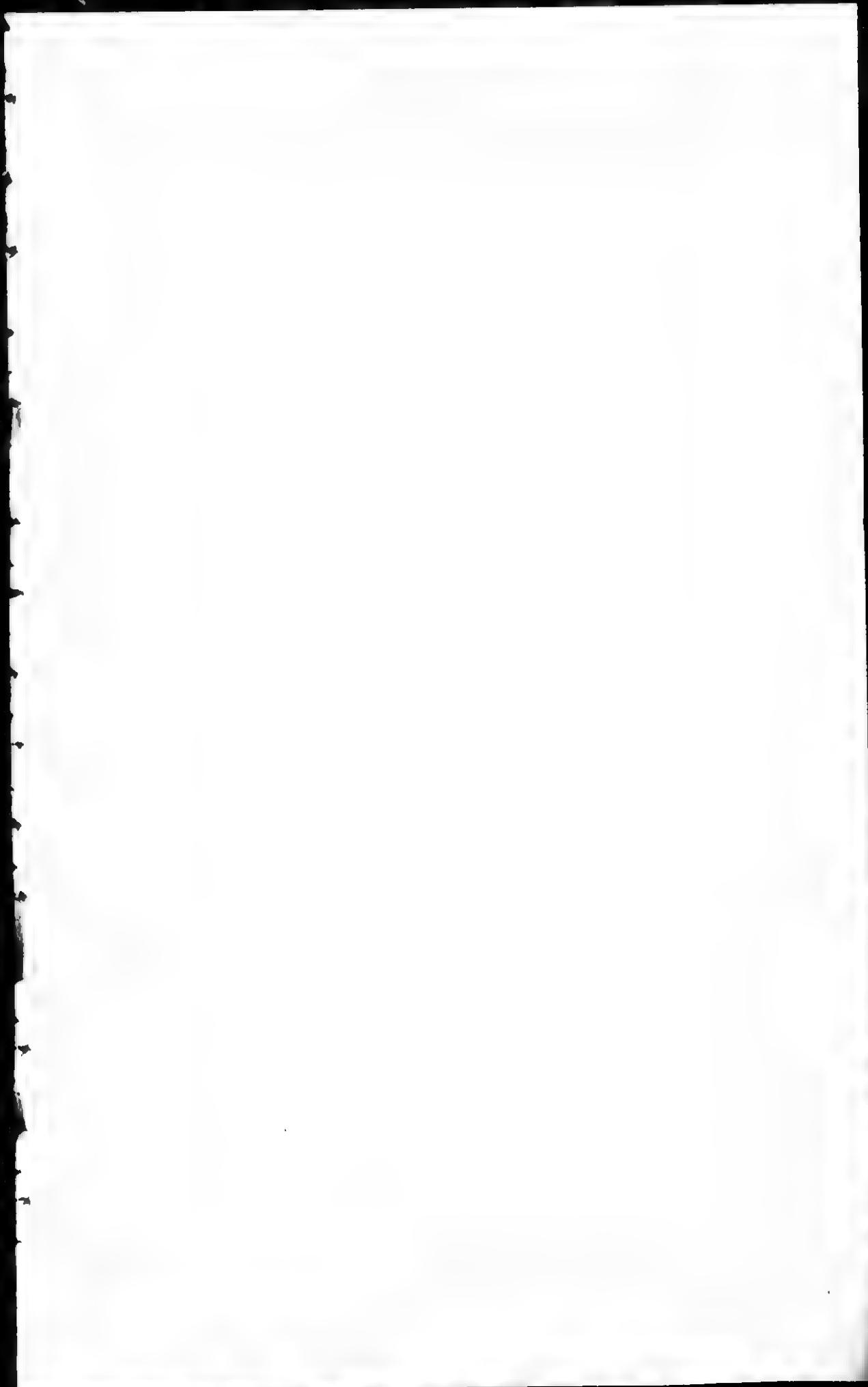
Walter H. Mayo, III, Esq.
Federal Maritime Commission
1321 H Street, N.W.
Washington, D.C. 20573

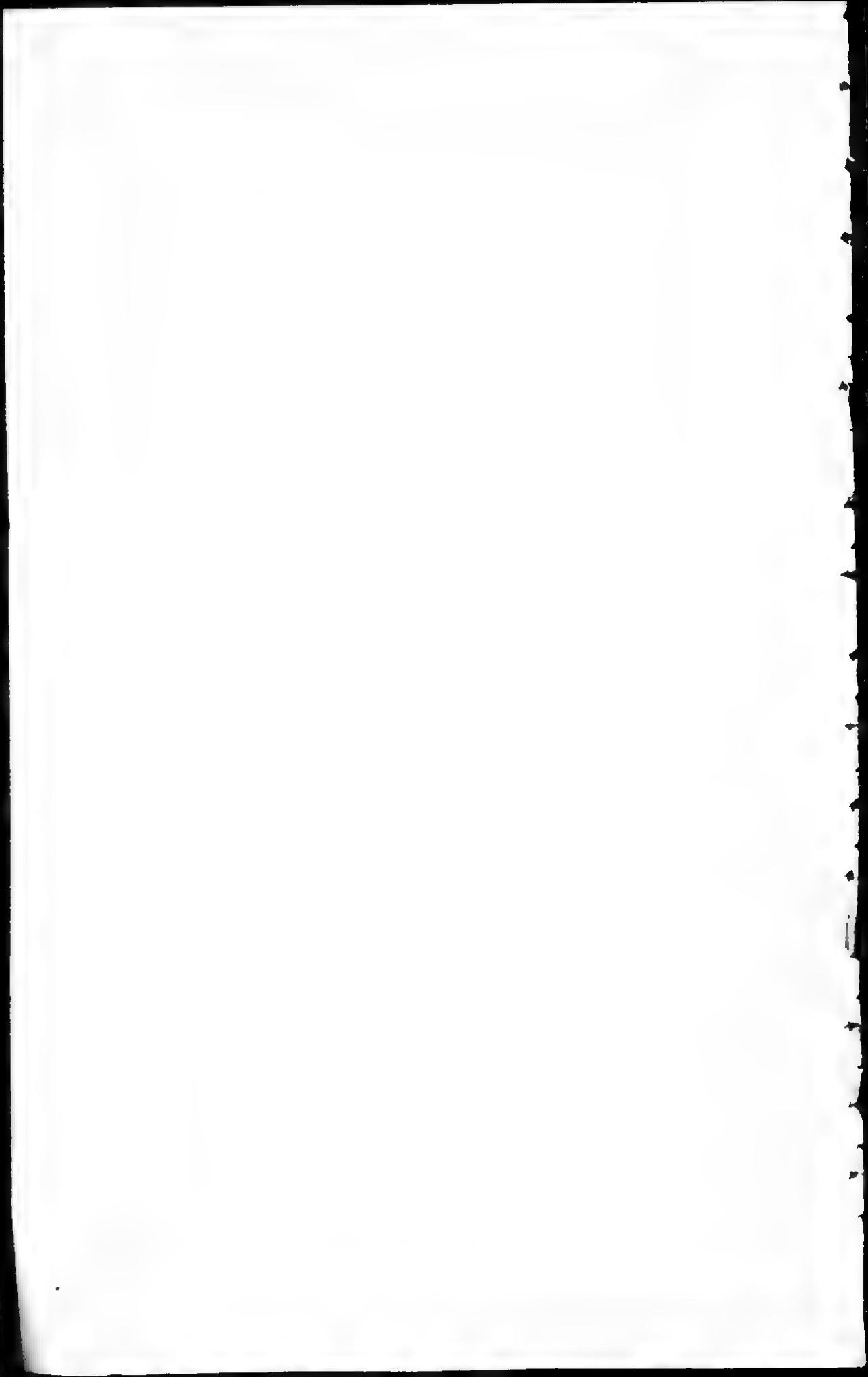
Irwin A. Seibel, Esq.
United States Department of Justice
Washington 25, D.C.

Dated at San Francisco, California, April 29, 1966.

GARY J. TORRE

(Appendices Follow)





Appendix I

Petitioner's claim that it is the victim of an alleged conspiracy is predicated on a mistaken assumption as to the distribution of power in PMA councils; petitioner maintains that "liner interests" control the affairs of PMA. Yet, the Trial Examiner found on unrefuted and unqualified testimony that PMA is not controlled by "liner interests"; (I.D. 32, Tr. 55; Exs. 41, 46, 47, 48). Petitioner's surmises, which are dependent upon a theoretical analysis of the composition of PMA membership, as to the control the carriers *ought* to be able to achieve are not a substitute for uncontradicted evidence as to who, *in fact*, has control of the Association.

The method by which the alleged conspiracy accomplished its objectives is, petitioner maintains, the adoption of a funding arrangement specially designed to burden petitioner's longshore operations with disproportionate costs. Again, the record disproves the theory. The Trial Examiner found, on the basis of unrefuted evidence,¹ that the mechanization assessments for which petitioner's contractors are obligated are determined on the same basis as their membership dues (I.D. pp. 12-13). Contributions are allocated under procedures used for the determination of cargo dues prior to adoption of the Plan, in order to assure the integrity of the system adopted for collection of the Fund. It was necessary to discourage conspiracies between a contractor and his customers whereby the latter changed its method of manifesting cargo so as to assist the contractor to achieve savings in labor costs; these procedures insofar as assessment of membership dues for the handling of automobiles

1. Tr. 72, 125-29, 144-46, 167-69, 396-97; see also, Exs. 2-O, 5-A, 6, 35. See footnote 9, *supra*, p. 13 for a refutation of petitioner's theories which are predicated on differentials in rates.

is concerned, are the same as those challenged by petitioner in this litigation (Tr. 395-397).

Petitioner's reasons for fabricating a theory of conspiracy derive from a dissatisfaction with a labor program of PMA. The basis of petitioner's dissatisfaction is, ironically, its good fortune in having achieved the advantage of efficient cargo-handling practices in advance of most of the industry. FMC found that a highly efficient and low-cost method of handling petitioner's cargoes had been developed.² Petitioner's questionable conclusion that the Mechanization Agreement does not afford any opportunities to reduce man-hours employed in its longshore operations confirms petitioner's good fortune: petitioner's longshore operations were established in an era when the ILWU was satisfied to maintain the status quo on highly-developed and costly featherbedding practices, and was hesitant to impose "make-work" policies on new operations (Tr. 350-354, 356-358, 363-371). Thus, when a longshore operation burdened with "make-work" practices incurs the same dollar increase in labor costs which petitioner's low-cost longshore operation is alleged to have incurred, the latter will show a larger percentage increase in labor costs than the high-cost operation.

Petitioner, however, did not have a vested interest in labor contracts and PMA bargaining policies which had enabled its contractors to develop a low-cost operation while others were burdened by high-cost featherbedding practices. Without conceding any relevancy to petitioner's arguments, we submit that its claims of an unequal and unfair distribution of labor costs are not established so long as its comparisons are limited, as they are, to a single item making up the total cost of longshore labor incurred by an operation. Nor do costs established prior to the

2. FMC p. 4. Petitioner does not challenge this finding.

adoption of the Plan provide an appropriate base for such comparisons, unless a showing is first made that the prior labor costs of the various longshore operations within the industry represented a fair allocation of the industry's overall longshore labor costs. Wisely, petitioner does not attempt to make this showing. There were too many penalty rates³ and make-work practices imposed by ILWU to fore-stall modernization to which other operations were subject.

The fallacies honey-combing petitioner's economics are many:

(1) Its use of prior labor costs as the base for its comparisons is at odds with the basis upon which ILWU and PMA negotiated the Mechanization Agreement. ILWU as well as PMA recognized the pressing need to reduce and secure a more equitable redistribution of the industry's overall labor costs (Tr. 350-353, 363-368, 377). "Guerilla" warfare on the Pacific Coast docks was imminent because of the senseless results of ILWU earlier "make-work" policies (Tr. 350, 353-357).

(2) Petitioner's comparisons, which are dependent upon percentage increases, ignore the intention of ILWU and PMA *not* to negotiate an across-the-boards percentage increase for the industry (Tr. 374-75, 388-89).

(3) The isolation of one item of longshore labor cost from all other costs imposed under the longshore contract is incompatible with the understandings of ILWU and PMA when they negotiated the Plan: they intended the costs of the Plan to be part of a single wage-package (Tr. 373-385, 399-400).

(4) Man-hours do not, as petitioner assumes and asserts, provide the only fair measure of labor costs. If the Plan

3. See, Ex. 4, pp. 104-180; cf. Section 6.4, p. 32 of Ex. 4.

Appendix

had been funded on this basis, those longshore operations enjoying the greatest savings would have made the least contribution to the Plan (Ex. 5-A).

By complaining that the costs of the Plan to its longshore operations was substantially disproportionate to benefits derived therefrom, petitioner attempts to convert the industry's efforts to relate costs to benefits into a conspiracy to victimize petitioner's longshore operations. PMA spent several years of study and months of negotiation with ILWU in an effort to develop means of relating prospective increases in productivity to the costs of "buying out" the work-practices and obstacles to modernization that ILWU had established. Following negotiations, the PMA Funding Committee undertook the same task. All of these exhaustive and searching studies and negotiations failed to produce such a method for funding the Plan (Tr. 373, 381-384; Exs. 5-A and 5-B). The industry could not, as the record makes clear, develop such a method because of the inadequacy of information available and the absence of means of developing the requisite information. Collective bargaining had been conducted on the basis of industry-wide averages for so long, that no reliable information was available as to the consequences of the Plan for the many diverse operations comprising the longshore industry. This very fact would have precluded the conspiratorial activities charged by petitioner, assuming PMA and its members had wished, as they did not, to ferret out a scapegoat.

If petitioner believes a conspiracy against it was initiated when the Funding Committee refused to recommend for petitioner's low-cost longshore operations a lower assessment rate as an exception to the prevailing method by which contributions were assessed, then petitioner does not appreciate the impossible task the Committee would have

undertaken. The Committee's Chairman made clear that such action would have stimulated like "me too" claims from other longshore operations (Tr. 171). Since petitioner's longshore operations are not "marginal" as in the case of operations involving coastwise lumber, the grant of an exception to petitioner's contractors would have been construed by the industry as relief from the need to establish, before an exception would be recognized, that the costs of the Plan threatened to force an operation out of existence. The action urged by petitioner upon the Committee presented substantial risks of inadvertently granting indefensible exceptions which could be converted into competitive advantage for some operations. The Committee properly did not expose the industry to the dislocations which a funding method applied on a company-by-company basis would have caused. Certainly the Committee's refusal to assume such never-ending examinations does not establish an intention to conspire against petitioner. Nor was the Committee, as Section I of Argument makes clear, required by any law of the United States, to undertake such examinations.

Moreover, PMA was not impressed by petitioner's protestations that benefits did not inure to its longshore operations. A substantial reduction in man-hours in petitioner's longshore operations in Los Angeles was achieved because of the "tremendous change" in what had been a "serious situation";⁴ petitioner in its negotiation of stevedore rates with MTC was willing to share the risks of "dead-time" (which can result in "substantial amounts of money depending upon the circumstances and mood of the men") because the "industry" had achieved "a very fair approach" to the

4. Tr. 254-257.

"dead-time" problem;⁵ petitioner had introduced in its longshore operations specially-designed cargo-handling devices,⁶ and was introducing new vessels on which the "production per gang hour" is "comparable" to that on the specially-designed vessel which Matson Navigation Company introduced when the adoption of the Plan signified a withdrawal of ILWU opposition to change.⁷

PMA knows from experience that some of the changes in petitioner's longshore operations, such as the change of attitude in Los Angeles, and the development of a "fair approach" to the problem of "dead-time", simply could not have been achieved without the change in "climate" produced by the concerted activities of PMA (Tr. 400-405, 406-08). PMA knows that changes in vessel design and introduction of cargo-handling equipment were previously resisted by ILWU, regardless of whether such innovations threatened to reduce work opportunities for the dock workers (Tr. 403-05). PMA does not understand why petitioner should be excused from the funding arrangements of the Plan that made these and future changes possible.

Finally, petitioner's sang-froid in discounting the advantages of being relieved from the consequences of a strike does not mask the very substantial and special benefits received by petitioner from successful negotiations which averted a strike. Of course, the entire maritime industry benefited from the avoidance of a prolonged strike on the docks. However, it is the operators of the largest fleets and the shippers of the largest volume of cargo who are most damaged when strikes occurs. While the record does not disclose whether petitioner would be relieved from the

5. Tr. 264-265, 389-391.

6. Tr. 229.

7. Cf. Tr. 304-05 and 405-06.

heavy losses attendant with the payment of charter-hire on vessels which are tied-up by a strike, petitioner was substantially benefited in not having its access to the attractive Pacific Coast market-place for automobiles blocked by a strike. As the shipper of the largest volume of commercial dry-cargo carried by private carriage to the Pacific Coast,⁸ its savings from avoidance of a strike would obviously exceed those enjoyed by any other shipper.⁹

8. Op. Br. p. 3.

9. Perhaps the best way to explain the economic facts of life regarding the implementation of the Mechanization Plan can be expressed in the words of Harry Bridges testifying before the Committee on Merchant Marine and Fisheries in March, 1963:

"But they [PMA] had to decide between 5 million a year plus, and the cost of a strike." Hearings on H.R. 1897, H.R. 2004, H.R. 2331, 88th Cong., 1st Sess. p. 573 (1963).

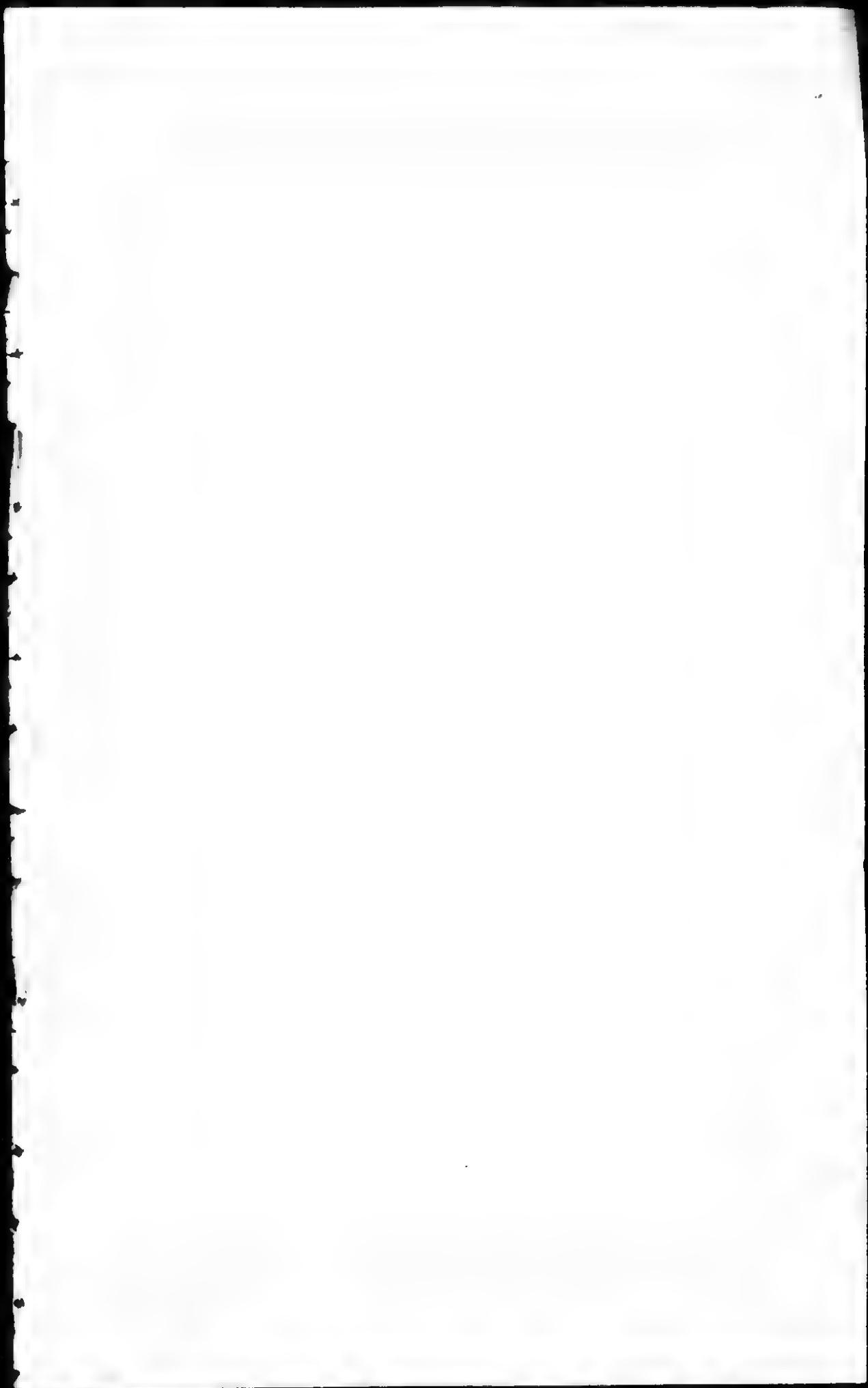
Appendix II

Section 5(1) Interstate Commerce Act (49 U.S.C. § 5(1)):

“§ 5, par. (1). Pooling; division of traffic, service, or earnings. Except upon specific approval by order of the Commission as in this section provided, and except as provided in paragraph (16) of section 1 of this title, it shall be unlawful for any common carrier subject to this chapter, chapter 8, or chapter 12 of this title to enter into any contract, agreement, or combination with any other such common carrier or carriers for the pooling or division of traffic, or of service, or of gross or net earnings, or of any portion thereof; and in any case of an unlawful agreement for the pooling or division of traffic, service, or earnings as aforesaid each day of its continuance shall be a separate offense: . . .”

Section 401 Federal Aviation Program (49 U.S.C. § 1371(k)):

“(4) It shall be a condition upon the holding of a certificate by any air carrier that such carrier shall comply with sections 181-188 of Title 45.” [Railway Labor Act].



OFFICE COPY

REPLY BRIEF FOR PETITIONER

IN THE

United States Court of Appeals For the District of Columbia Circuit

No. 19,840

VOLKSWAGENWERK AKTIENGESELLSCHAFT,
Petitioner,

against

FEDERAL MARITIME COMMISSION and
UNITED STATES OF AMERICA,
Respondents,

PACIFIC MARITIME ASSOCIATION and
MARINE TERMINALS CORPORATION,
Intervenors.

On Petition to Review and Set Aside Order of the
Federal Maritime Commission

RICHARD A. WHITING
ROBERT J. CORBEE
STEPTOE & JOHNSON
1250 Connecticut Avenue, N.W.
Washington, D. C. 20036
Attorneys for Petitioner

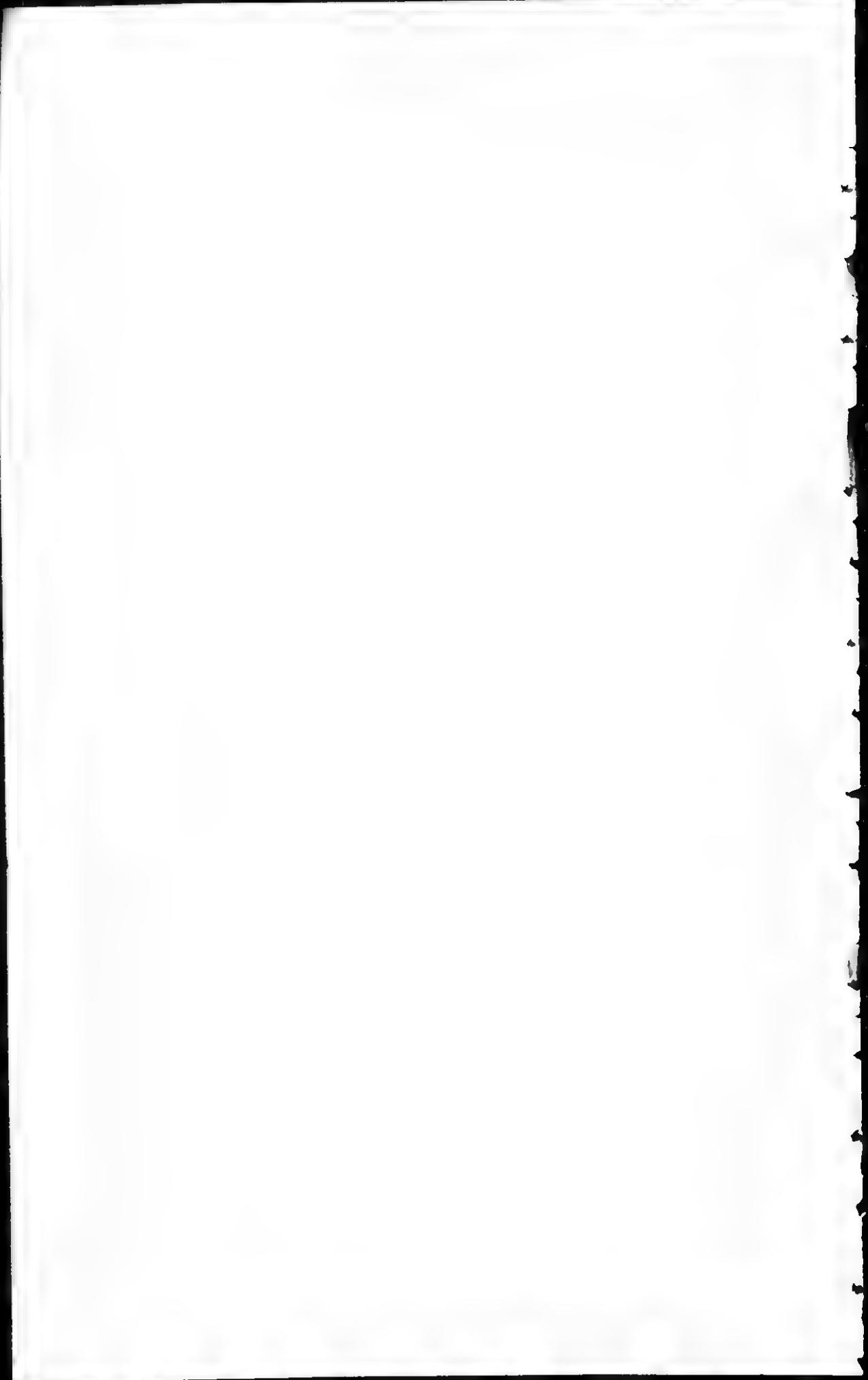
WALTER HERZFELD
CECILIA H. GOETZ
BERNARD J. WALD
HERZFELD & RUBIN
40 Wall Street
New York, N. Y. 10005

United States Court of Appeals
for the District of Columbia Circuit

FILED MAY 3 1 1966

STANLEY J. MADDEN
PILLSBURY, MADISON & SUTRO
225 Bush Street
San Francisco, California 94104
Of Counsel

Nathan J. Paulson
CLERK



INDEX

PAGE

POINT I—No more than the Commission can our ad-	
versaries support the exclusion from section 15 of	
PMA's cooperative working arrangement	1
A. Commission counsels' interpretation of sec-	
tion 15	3
B. Neither public policy nor the statutory lan-	
guage support the labor exception urged	
by PMA	8
C. MTC renews here its groundless jurisdic-	
tional contentions	12
D. The factual foundations for the Commis-	
sion's conclusions are inadequate, whatever	
its legal theory	13
POINT II—The opposing briefs do little more than	
repeat the Commission's erroneous grounds for	
deeming section 16 to be inapplicable	17
POINT III—Our adversaries cannot support the Com-	
mission's conclusion that section 17 has not been	
violated	20
CONCLUSION	25
 APPENDIX:	
The similarity between the fund assessments and	
PMA dues	1a
The Army's alleged satisfaction with the Mech	
Fund assessments	2a
Petitioner does not contend that man-hours must	
be used to spread the cost of the Mech Fund ..	3a
Various points raised by PMA are without merit	
	4a

Table of Cases Cited

	<u>PAGE</u>
Associated-Banning Co. v. Matson Nav. Co., 5 FMB 432 (1958)	5a
Burlington Truck Lines v. United States, 371 U. S. 156 (1962)	3
California Retail Grocers & Merchants Ass'n, Ltd. v. United States, 139 F. 2d 978 (9th Cir. 1943)	23
Joint Agreement Between Member Lines of the Far East Conference and the Member Lines of the Pacific Westbound Conference, F.M.C., Docket No. 872 (July 28, 1965)	19
*Kennedy v. Long Island R.R., 319 F. 2d 366 (2d Cir. 1963), cert. denied, 375 U. S. 830 (1963)	4, 5, 7, 10
*New York Freight Forwarders & Brokers Ass'n v. Federal Maritime Comm'n, 337 F. 2d 289 (2d Cir. 1964), cert. denied, 380 U. S. 914 (1965)	17, 18, 19, 20
N.L.R.B. v. Brown, 380 U. S. 278 (1965)	25
Northern California Pharmaceutical Ass'n v. United States, 306 F. 2d 379 (9th Cir. 1962), cert. denied, 371 U. S. 862 (1962)	7
*Plymouth Dealers' Ass'n of Northern California v. United States, 279 F. 2d 128 (9th Cir. 1960)	7
*S.E.C. v. Chenery Corp., 332 U. S. 194 (1947)	3n
*United States v. Nationwide Trailer Rental System, Inc., 156 F. Supp. 800 (D. Kan. 1957), aff'd, 355 U. S. 10 (1957)	7
United States v. National Ass'n of Real Estate Boards, 339 U. S. 485 (1950)	23
*United Mine Workers v. Pennington, 381 U. S. 657 (1965)	11
United States v. Trans-Missouri Freight Ass'n, 166 U. S. 290 (1897)	23

* Cases or authorities chiefly relied upon are marked by asterisk.

United States v. United Liquors Corp., 149 F. Supp. 609 (W. D. Tenn. 1956), aff'd per curiam, 352 U. S. 991 (1957)	23
*United States v. Utah Pharmaceutical Ass'n, 201 F. Supp. 29 (D. Utah 1962), aff'd, 371 U. S. 24 (1962)	7
United States v. Women's Sportswear Manufac- turers Ass'n, 336 U. S. 460 (1949)	11

Table of Statutes Cited

Clayton Act:

Section 6 (15 U. S. C., section 17)	11
---	----

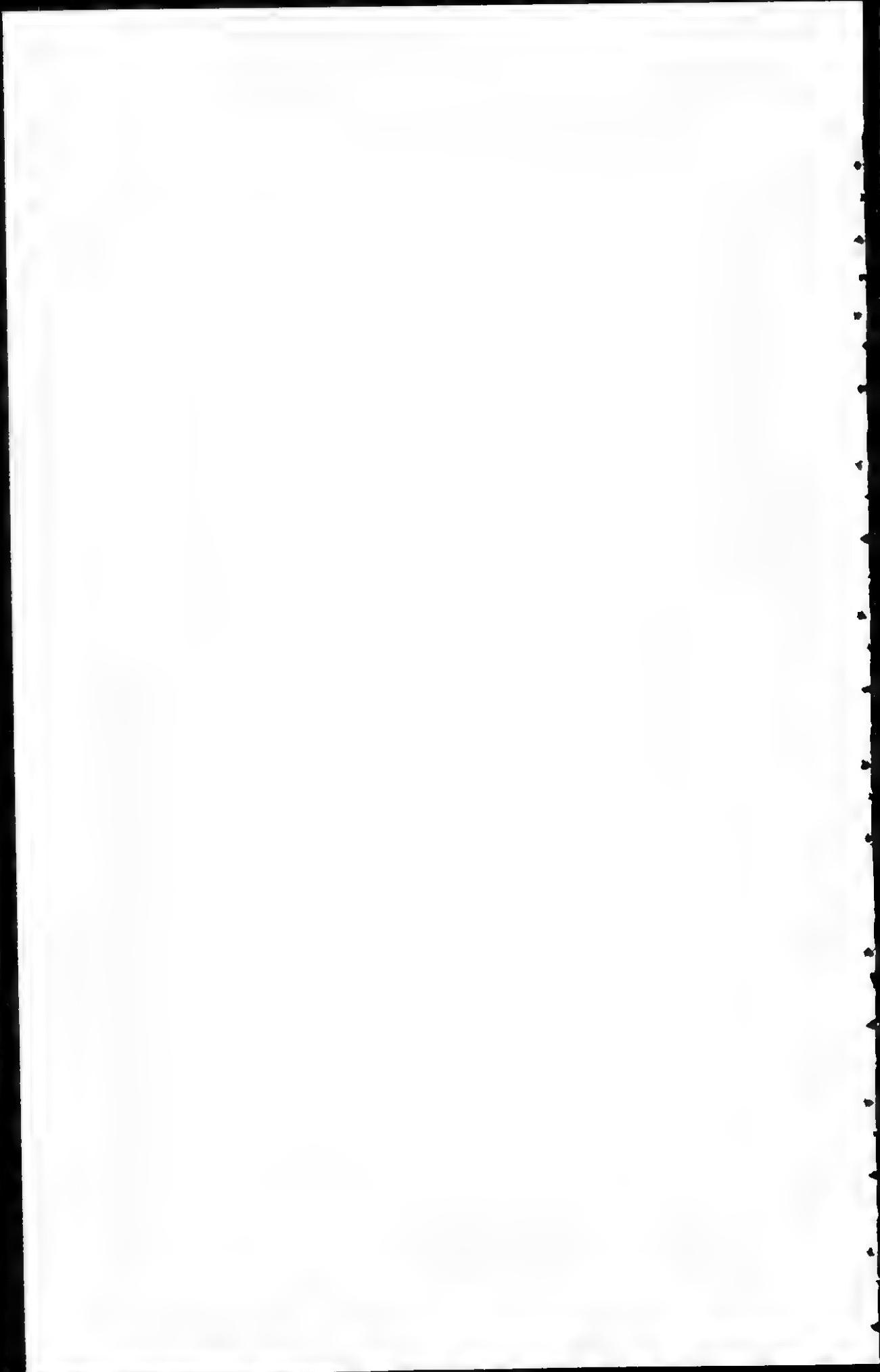
Shipping Act of 1916:

Section 1 (46 U. S. C., section 801)	4
Section 15 (46 U. S. C., section 814)	1-17
Section 16 (46 U. S. C., section 815)	17-20
Section 17 (46 U. S. C., section 816)	20-25

Table of Other Authority Cited

Kronstein & Miller, Regulation of Trade 912 (1953)	23
--	----

* Cases or authorities chiefly relied upon are marked by asterisk.



IN THE
United States Court of Appeals
For the District of Columbia Circuit

No. 19,840

VOLKSWAGENWERK AKTIENGESELLSCHAFT,

Petitioner,

against

FEDERAL MARITIME COMMISSION and
UNITED STATES OF AMERICA,

Respondents,

PACIFIC MARITIME ASSOCIATION and
MARINE TERMINALS CORPORATION,

Intervenors.

On Petition to Review and Set Aside Order of the
Federal Maritime Commission

REPLY BRIEF FOR PETITIONER

POINT I

No more than the Commission can our adversaries support the exclusion from section 15 of PMA's co-operative working arrangement.

Petitioner is attacking on two separate and independent grounds the Commission's conclusion that the coopera-

tive working arrangement among the membership of the Pacific Maritime Association ("PMA") is not a section 15 agreement. First, we challenge the Commission's interpretation of the statute (VW Br. 24-36)*; second, the application of that interpretation to the facts of this proceeding (VW Br. 36-39).

As we read our opponents' briefs, neither Marine Terminals Corporation ("MTC") nor PMA undertakes to defend the Commission's reading of section 15. MTC by-passes the issue of statutory construction completely (MTC Br. 10-15). PMA attributes to the Commission an interpretation of the Shipping Act which would place outside the scope of the statute "concerted actions pertaining to maritime labor-management relations" (PMA Br. 18) and then proceeds to support this imputed construction (PMA Br. 9-27).

Counsel for the Commission alone attempt to defend the Commission's approach. However, they derive from the Commission's opinion a different statutory construction than our brief discusses or than we think the Commission intended. As a result, Commission counsel never

* Petitioner's original brief is designated herein as "VW Br." ; that of PMA as "PMA Br." ; the one submitted by counsel for the Commission is "FMC Br." ; and that of Marine Terminals Corporation is identified as "MTC Br." Otherwise, the designations are the same as in our original brief, that is, unidentified numbers refer to the transcript. "I.D." indicates the Initial Decision of the Hearing Examiner. "R," the report filed by the Commission, "P," the dissenting opinion of Commissioner Patterson, "H," the dissenting opinion of Commissioner Hearn, and "Ex." signifies an exhibit. Wherever the cited material has been reproduced in the Joint Appendix, the pertinent pages of the Joint Appendix are indicated in bold-face numerals within brackets immediately following the original citation.

defend the statutory interpretation we attacked. Thus, none of our opponents squarely enter the lists in favor of the Commission's formulation.

Similarly, as we develop in the last section of this point (pp. 13-17, *infra*), our adversaries fail to come to grips with our arguments addressed to the record. Thus, our second point, like our first, is left largely unanswered.

In this brief, we shall deal with counsels' substitute justifications on their merits, although few principles are better settled than that the "courts may not accept appellate counsel's post hoc rationalizations for agency action" *Burlington Truck Lines v. United States*, 371 U. S. 156, 168 (1962).*

A.

Commission Counsels' Interpretation of Section 15.

Counsel for the Commission urge this Court to accept as "reasonable" an interpretation of section 15 that would place PMA's cooperative working arrangement outside the statute because such arrangement, the Commission found, "did not affect the competitive relationships among the PMA members, as there was no agreement among the mem-

* "[A] simple but fundamental rule of administrative law is * * * that a reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency. If those grounds are inadequate or improper, the court is powerless to affirm the administrative action." *S.E.C. v. Chenev Corp.*, 332 U. S. 194, 196 (1947).

bers to pass on all or a part of the fund assessments" (FMC Br. 20).*

Such construction is urged on the authority of a fragment from the Alexander Report and of *Kennedy v. Long Island R. R.*, 319 F. 2d 366 (2d Cir. 1963), cert. denied, 375 U. S. 930 (1963), which, counsel say, interpreted the Interstate Commerce Act as not encompassing "agreements affecting labor-management relationships except where the competitive relationships of the parties are affected" (FMC Br. 19).

As the Second Circuit, however, made clear in a footnote omitted by Commission counsel in quoting from that Court's opinion (FMC Br. 20), this interpretation of the Interstate Commerce Act rests on very different statutory language than is here involved. Distinguishing on the basis of the differences in the controlling statutes the situation of the airlines from the railroads, the Second Circuit said:

"There was thus no need for the participating railroads to secure the prior consent of the Interstate

* In Commission counsels' "Summary of Argument" counsel indicate that another reason why the instant agreement "is not within the purview of the Shipping Act" is that it "did not pertain to ocean transportation" (FMC Br. 15). This point is in no way developed, however, in the argument which follows, and for good reason. The Commission similarly abandoned it after the Hearing Examiner adopted it (I.D. 31 [647a-648a]). The contention that collective action affecting the discharge of cargo at the conclusion of its ocean voyage does not pertain to ocean transportation is indefensible and wholly at odds with the statutory scheme. Obviously, ocean transportation means carriage from shore to shore. Would any shipper consider transportation completed with his goods still aboard a vessel bobbing up and down in the harbor? If the Shipping Act was indifferent to on-shore activities, it would not cover, as it does, any person "carrying on the business of forwarding or furnishing wharage, dock, warehouse or other terminal facilities in connection with a common carrier by water" (46 U. S. C., section 801) and require all contracts between such persons, as well as those between common carriers by water, to be filed (46 U. S. C., section 814).

Commerce Commission; 49 U. S. C. § 5(1). The submission for approval to the Civil Aeronautics Board of the airlines' mutual aid pact was apparently dictated by statutory language considerably broader than that of the anti-pooling provision of section 5(1) of the Interstate Commerce Act. See section 412 of the Federal Aviation Act, 49 U. S. C. § 492:

'Every air carrier shall file with the Board a true copy *** of every contract or agreement *** affecting air transportation *** between such air carrier and any other air carrier *** for pooling or apportioning earnings, losses, traffic, service, or equipment *** or for preserving and improving safety, economy, and efficiency of operation, *** or for other cooperative working arrangements.' " *Kennedy v. Long Island R. R.*, 319 F. 2d at 374 n. 11.

Had the statute before the Second Circuit contained language as broad as the Federal Aviation Act, as does the Shipping Act of 1916, the Court presumably would have reached a result directly contrary to what it did.

Furthermore, even if the very different language of the Shipping Act were susceptible of the same construction as was placed on the Interstate Commerce Act in the *Kennedy* case, PMA's cooperative working arrangement would still be covered. As Commission counsel recognize, *Kennedy* treats as within the statute any agreement "where the competitive relationships of the parties are affected" (FMC Br. 19).* This is not the test applied by the Commission. According to its counsel, it excluded PMA's agreement because it did not "affect competition by the parties in vying to serve outsiders" (FMC Br. 17). But

* Dealing with a strike-insurance policy issued for a flat premium payable out of the railroad's general assets, *Kennedy* indeed involved an agreement without any possible anti-competitive effect. The agreement created a fixed overhead charge wholly independent of the railroad's actual operations and which the railroad therefore was economically able to allocate as it pleased to all or any part of its business.

this does not mean that it did not nevertheless affect "the competitive relationships" of the parties thereto.

The argument to the contrary builds on two fallacies. First, it is assumed that an arrangement is only anti-competitive if it affects relations between parties and non-parties; second, that for such an effect to be present, it must be the subject of explicit agreement. Neither assumption withstands examination.

Why should the law be indifferent to the effect of the agreement on competition among the parties to the PMA arrangement for the business of one another, particularly where one hundred and twenty companies are involved, at different functional levels.*

Whether or not there was an "agreement" among the members of PMA regarding the passing on to non-PMA members of the Mech Fund assessment, what about the internal arrangements within the membership of PMA regarding the treatment of these assessments (VW Br. 9-10, 36)? PMA's membership is not limited to stevedoring contractors and terminal operators, but includes as well the largest and most important customers of these companies, i.e., common carriers. Acceptance of the position of Commission counsel would mean that all PMA need do is expand its membership to embrace everyone operating

* As we read the Commission's opinion, it does not suggest this absurdity. It said that for a section 15 agreement to exist here there would have to be "an additional agreement by the PMA membership to pass on all or a portion of its assessment to the carriers and shippers served by the terminal operators" (R. 9 [675a-676a]). In other words, the agreement would have to affect competition among terminal operators for carrier or shipper business. This is a functional test. We believe that Commission counsel are mistaken when they assert that the Commission found PMA's arrangement to be outside the statute because it "was not among 'the type of agreements which affect competition by the parties in vying to serve outsiders'" (FMC Br. 17).

on the Pacific coast and then it may regulate competition as suits itself, so long as it is careful to avoid agreements explicitly controlling the dealings of its members with outsiders.

Equally untenable is the second assumption, which this Court is asked to approve, that an agreement among competitors regarding the conduct of their business does not "affect competition by the parties in vying to serve outsiders" (FMC Br. 17, 20), unless the parties make such regulation an explicit term of their agreement. This is bad economics and worse law.

Competition is inhibited by any agreement among competitors regarding prices or related matters, whether or not the parties place themselves under any contractual restraint regarding what they actually will charge their customers. *Cf. Plymouth Dealers' Ass'n of Northern California v. United States*, 279 F. 2d. 128, 132, 134 (9th Cir. 1960); *United States v. Nationwide Trailer Rental System, Inc.*, 156 F. Supp. 800 (D. Kan. 1957), *aff'd*, 355 U. S. 10 (1957); *United States v. Utah Pharmaceutical Ass'n*, 201 F. Supp. 29 (D. Utah 1962), *aff'd*, 371 U. S. 24 (1962); *Northern California Pharmaceutical Ass'n v. United States*, 306 F. 2d 379 (9th Cir. 1962), *cert. denied*, 371 U. S. 862 (1962).

Once agreement is reached regarding how a common cost is to be allocated, further agreement is superfluous. Economic necessity will ensure collection of the agreed upon amount from the parties' customers (*Cf. MTC Br. 17*). Significantly, counsel for PMA contemptuously terms a "truism" that recognition of a uniform cost reduces capacity to compete (PMA Br. 14).

Thus, even if the snippet called by Commission counsel from the Alexander Report and *Kennedy v. Long Island R. R., supra*, justified reading section 15 as being confined to

those cooperative working arrangements which affect competitive relationships, these authorities will not support the additional requirements first, that the competition which is affected be for the business of persons not parties to the agreement and, second, that, in addition, the agreement itself explicitly regulate such competition. It is enough that the agreement is anti-competitive in nature and for this no more is necessary than that it regulate competition among the parties, whether for the business of each other or for outsiders, and that such regulation be a necessary consequence of the agreement, whether by reason of its inherent nature or explicit terms.

R.

Neither Public Policy Nor the Statutory Language Support The Labor Exception Urged by PMA.

As noted previously, PMA makes no attempt to justify the Commission's interpretation of section 15. Instead, it prefers to defend the results reached on the ground "that collective action concerning the labor-management relations of persons subject to the Shipping Act, 1916, is not subject to section 15 of the Act" (PMA Br. 9).

To appreciate the scope of the exception which PMA asks this Court to read into the Shipping Act's comprehensive regulatory scheme, certain undisputed facts are pertinent. First, no union is a party to the arrangements allocating the cost of the Mech Fund. Second, no union was consulted regarding how that Fund should be raised. In fact, in the very collective bargaining agreement establishing the Mech Fund, it was specifically provided that the union involved, the International Longshoremen's and

Warehousemen's Union ("ILWU"), should have no voice in its collection (Ex. 1C, pp. 7-8 [283a-285a]).*

PMA suggests that the exclusion of the ILWU from participation in the decision as to how the Fund was to be raised is because the parties "were unable, in the time available, to develop a method for collecting the Fund" (PMA Br. 4). In fact, however, it was a major employer objective in the bargaining to exclude the union from all influence on the collection of the Fund (380-386 [206a-211a]) and in weighing the various alternatives for collecting the Mech Fund, the one least likely to lend itself to a union takeover was deliberately selected (Ex. 5A, pp. 2 [467a-468a], 6-7 [471a-473a]).

In consequence, PMA's cooperative working arrangement for collecting the cost of the Fund is entirely the product of management. The sole connection which it enjoys with labor is that the obligation to create the Fund has its origin in a collective bargaining agreement. But the obligation to pay wages equally has its origin in a collective bargaining agreement. Does it follow that the Commission is similarly ousted of jurisdiction to review the manner in which the money to pay such wages is earned?

* Mr. St. Sure, PMA's president, testified that if PMA had adopted a system that would have abolished whole segments of the industry, the union would have reopened the bargaining (388 [212a]). PMA contends that this testimony establishes a "continuing right" in the union regarding how the Mech Fund is raised (PMA Br., 4 n. 3). On the contrary, however, the fact that ILWU would have had to "reopen the bargaining" in order to bring about any change shows how completely labor was excluded from any right to participate in the first place. PMA is unable to point to a scintilla of evidence to undermine the Commission's only finding on the point that "the method of collecting the fund from the PMA membership was reserved to PMA" (R. 2 [668a-669a]).

In urging an imaginary labor exemption PMA is simply renewing in this Court arguments which failed to win acceptance below. Not only did the Commission put its decision on a different ground, but there is nothing to show that it disagreed with the Examiner—whose decision on this point was not excepted to by PMA. The Hearing Examiner expressly rejected PMA's contention "that the Commission does not have jurisdiction of the agreement establishing the method of collecting the Mech Fund because it is a part of a collective bargaining agreement" (LD. 32 [648a-649a]).

There are no policy reasons for excluding agreements between maritime companies from surveillance simply because such agreements are ostensibly entered into in the capacity of these companies as employers. As we have earlier pointed out, the Civil Aeronautics Board, construing language similar to that found in section 15, has treated contracts and agreements entered into by aviation companies *qua* employers no different from any other in determining whether they are of the character that must be filed and approved before they can be enforced (VW Br. 33).

That a strike-insurance plan was held in *Kennedy v. Long Island R. R., supra*, to be outside the Interstate Commerce Act's mandatory filing requirements was due, as we have already noted, to the particular statutory language there involved which led the Court to conclude that only anti-competitive agreements were covered. Had the agreement there, however, been of such a character, there is nothing in the Court's opinion which suggests that its connection with labor would have saved it.

PMA is in error when it asserts that section 15 "has no more application to the agreements establishing uniform labor costs than do the companion provisions of the Sherman Act" (PMA Br. 14-15). Whatever limited im-

munities labor unions enjoy from the Sherman Act is the product of section 6 of the Clayton Act (15 U.S.C., section 17), which has no parallel in the Shipping Act.

Furthermore, even the statutory immunity which certain labor activities enjoy from the Sherman Act falls far short of placing outside the scope of that statute any and all agreements to which a union may be a party. When unions combine with non-union groups they risk losing their exemption from Sherman Act scrutiny. *United Mine Workers v. Pennington*, 381 U. S. 657 (1965). "Benefits to organized labor cannot be utilized as a cat's-paw to pull employers' chestnuts out of the antitrust fires." *United States v. Women's Sportswear Manufacturers Ass'n*, 336 U. S. 460, 464 (1949).

Had ILWU been persuaded to make itself a party to PMA's inequitable and discriminatory cooperative working arrangement, it would have lost its own exemption from the antitrust laws, not conferred one upon PMA.*

But, in fact, ILWU was never a party to PMA's cooperative working arrangement and that arrangement is not the product of collective bargaining. On the contrary, it was devised by management alone to serve management objectives. There is not a single finding by the Commission, nor could there be on the basis of the record, to support PMA's claim that its cooperative working arrange-

* In the light of *United Mine Workers v. Pennington*, *supra*, 381 U. S. 657, it is now clear that ILWU's undertaking (in the basic agreement creating the obligation to establish a Mech Fund) to require employers not belonging to PMA to contribute to the Mech Fund "at comparable rates and in a like fashion" (Ex. 1C, p. 8 [284a-285a]), was illegal. PMA extracted this commitment from the union despite its attorney's advice "that imposing Mechanization Fund contributions on such an outsider has very delicate anti-trust implications" (Ex. 22, p. 2 [508a-509]).

ment derives any immunity from the Shipping Act because of its tenuous connection with labor.*

C.

MTC Renews Here Its Groundless Jurisdictional Contentions.

MTC's argument that its acts in relation to the Fund lie outside the jurisdiction of the Commission (MTC Br. §9) rests entirely on statements of fact belied by the record. Contrary to the claims of MTC (Br. 9, 16) and of PMA (Br. 10, 41), this case is not confined to MTC's services as a stevedore.

As Commissioner Patterson points out in his detailed exposition of the record (P. 15-17 [681a-685a]), the services MTC renders petitioner go far beyond simple stevedoring.**

* PMA counters our contention that "cooperative working arrangement" means exactly what it says by citing a long string of cases which it claims include decisions which have applied the rule of *eiusdem generis* "to determine the content of the phrase" (PMA Br. 22 n. 22). Not one of the cases cited supports this claim. Indeed, many of them were relied on by petitioner in its brief to the Commission to show that the Examiner was in error in invoking the *eiusdem generis* rule to defeat the legislative intent and that his interpretation was inconsistent with all past construction.

** It may be appropriate at this time to dispose of a related contention that the assessments involved in this proceeding concern labor employed in activities outside the jurisdiction of the Commission (PMA Br. 10). This argument rests in large measure on the fact that after the cooperative working agreement had been in operation for one year, a separate assessment was added in December, 1961, based on the hours worked by marine terminal clerks (Exs. 56 [594a-595a], 57). Nevertheless, it would be incorrect to infer that the longshoremen for whose benefit the tonnage tax is levied are engaged in purely stevedoring operations. Extensive non-clerical terminal labor is employed by MTC in discharging its obligations to petitioner to transport automobiles from shipside to storage area, to segregate them at the point of rest and to provide cleaning, lighting, heating, gen-

There is likewise no merit to MTC's position that only its activities in regard to chartered vessels are in issue. Admittedly, it has paid and collected the Fund assessments in connection with cargo covered by common carriers with whom it does ninety per cent of its business. Its practices in regard to such cargo are inextricably intertwined with its treatment of chartered cargo. In holding MTC to be a person subject to the jurisdiction of the Commission (I.D. 26-27 [640a-643a]) the Hearing Examiner reached the only result the record will permit.

D.

The Factual Foundations For The Commission's Conclusions Are Inadequate, Whatever Its Legal Theory.

Up to this point, we have been engaged in rebutting the various grounds urged by our adversaries for reading the Shipping Act as meaning something different from what it says. Only if this Court agrees with the Commission that for section 15 to be applicable something more must be shown than the existence of a cooperative working arrangement among common carriers or other persons subject to the Shipping Act, will it reach the subsidiary factual questions involved in this proceeding.

According to the Commission, "What must be demonstrated before a section 15 agreement may be said to exist is that there was an additional agreement by the PMA membership to pass on all or a portion of its assessments

eral maintenance and guard service in the terminal area (Ex. 51; 206-208, 211, 230 [147a-148a], 251-252). MTC's vice president testified specifically that its "basic cost" is the "gang" used "aboard the ship and *on the terminal*" (211) and that these "gangs" are composed of ILWU members (207-208). Thus, even for the period after December, 1961, the assessments involved in this case represent costs of terminal as well as stevedoring labor. Similarly, the beneficiaries of the Mech Fund are all longshoremen, wholly irrespective of whether employed in stevedoring or in terminal work (Ex. 1C, p. 4 [281a-282a]).

to the carriers and shippers served by the terminal operators" (R. 9 [675a-676a]). In our original brief, we addressed ourselves to the facts regarding each of the two groups of customers referred to by the Commission, i.e., the carriers on the one hand (VW Br. 36) and the shippers on the other (VW Br. 37-38).

MTC contends that we are precluded by the "substantial evidence" rule from going behind the Commission's implied finding of no agreement by PMA's membership to pass on the assessments to carriers and shippers (MTC Br. 10-12). The "substantial evidence" rule, however, will not save such gross error as is present here.

The evidence upon which the Commission's findings rest consists of the denial of any agreement to pass on by two PMA connected witnesses, Mr. Teige (162 [126a]) and Mr. St. Sure (399 [219a-220a]), and the fact that MTC was willing to absorb about one-tenth of the PMA assessments on Volkswagen automobiles (245-246 [154a-155a]), or approximately 20 cents out of a total assessment of \$2.35 (246 [154a-155a]).

Of these three items only the first two are relevant to the issue of what PMA's agreement was regarding the responsibility of *carrier members* of PMA, as opposed to *non-PMA shippers*, for the Mech Fund assessments. And such self-serving conclusory testimony by interested witnesses is completely overborne by the contemporary documentary evidence which establishes beyond question that, so far as the member carriers are concerned, it is part and parcel of the cooperative working arrangement that the terminal operators will pass on to them the assessments paid on their cargo (VW Br. 9-10). In fact, when the fund assessment was first adopted, it was paid directly by the carriers (64 [77a]; Ex. 35 [521a-523a]). The duty of making payment was only shifted to the terminal operators to ensure the deductibility of these payments for income tax purposes (64 [77a]; Ex. 2L, pp. 18-19 [367a-368a]; Ex. 55 [588a-593a]). The facts regarding the carrier re-

sponsibility for the on-shore operators' payments appear from the minutes of PMA's Board of Directors (Ex. 2L, pp. 18-19 [367a-368a]; Ex. 2C, p. 4), the instructions sent PMA's members (Ex. 55 [588a-593a]) and the union agreement itself (Ex. 1C, pp. 15-16 [289a-290a], 40-42 [305a-307a]).*

Neither MTC nor counsel for the Commission deal with this evidence at all (MTC Br. 10-15; FMC Br. 20). In fact, Commission counsel omit from their factual statement any reference whatsoever to how the one hundred and twenty members of PMA dealt with the Mech Fund among them-

* We find it difficult to believe that the exact arrangements for collection of five million dollars a year from one hundred and twenty companies should have to be deduced from scattered documents. In our original brief, we questioned in a different connection whether PMA had, in fact, made all its records available as we requested (VW Br. 13 n.). The observation was made in good faith on the basis of an exhaustive study of the documents in the record. However, because we realized that we were bound in this Court by the record, whatever its defects, we contented ourselves with giving one example of a significant document which we believed had not been produced, the report to PMA's Board of Directors from the Fund subcommittee, submitted six months after the Mech Fund assessments went into operation.

In its initial brief PMA claimed that at "the deposition of Kenneth Saysette," PMA's counsel volunteered to allow "any further examination of documents desired" (PMA Br. 34 n. 33). Since no deposition was ever taken of Mr. Saysette what must be intended is his examination during the hearing before the Examiner. In a supplemental memorandum PMA sets forth a copy of the document which we had identified as missing from the record. As we thought, its contents bear directly on several subsidiary issues. However, PMA's counsel asserts that circumstantial evidence indicates that the report was exhibited to petitioner's counsel and rejected as evidence by them. Not only is the recollection of petitioner's counsel to the contrary, but it is difficult to believe that, while putting into evidence pencilled memoranda (Exs. 42-44) and even a mimeographed form letter (Ex. 45), we would have rejected a document of the dignity and importance of this report alluding specifically to the complaints regarding PMA's treatment of automobiles.

selves. Both treat as the only evidentiary question whether or not PMA's terminal operators had entered into an agreement regarding charges to non-PMA customers.

Only PMA even recognizes the issue of the effect of PMA's agreement upon the competition of its onshore members for the business of PMA carriers to be in the case and does so only to bury it in irrelevancies (PMA Br. 29-35). Our careful analysis of the documentary evidence is contemptuously described as "efforts to twist such directions [how to handle the assessment] out of PMA communications to members which are isolated from the context in which they were issued" (PMA Br. 31). But we are not told how else these PMA communications can be read, in or out of context, except as directing PMA carrier members to send PMA onshore members the money needed by the latter to pay the assessment.*

As to the other customer group referred to by the Commission, *non-PMA shippers*, the evidence and our position was somewhat different. As to these, we contended that there was an "understanding" that the assessments would be passed on to them by the terminal operators who, in fact, had no other economic alternative, and that this is all the statute, read properly, can require (VW Br. 37-39). In this connection, we argued that the evidence relied on by the Commission that MTC was willing to absorb part of the cost was wholly consistent with such "understanding" and therefore did not support the Commission's conclusion that there was no section 15 agreement here.

MTC answers our argument that no agreement was necessary to secure action to which there was no alterna-

* There is reason to believe that PMA's dues, on which the assessment is, in part, modelled is paid directly to PMA by its carrier members on whatever cargo PMA on-shore operators load or discharge for them (410-411 [227a-229a]), just as was originally intended regarding the Fund assessment (Ex. 35 [521a-523a]).

tive, by invoking the antitrust cases dealing with "conscious parallelism" (MTC Br. 13-15). These cases MTC says hold "that economic circumstances compelling parallel action by competitors in their self-interest are not sufficient to permit the drawing of an inference that an agreement exists" (MTC Br. 13). Neither this principle nor the cases which support it have any relevance here. It may well be that where parallel action is compelled by "economic circumstances" it is entirely unimpeachable. This is a very different thing, however, from saying that competitors may by agreement create the very economic circumstances which compel such parallel action.*

POINT II

The opposing briefs do little more than repeat the Commission's erroneous grounds for deeming section 16 to be inapplicable.

As we pointed out in our main brief (VW Br. 40-41), the Court of Appeals for the Second Circuit, at the urging of the Commission, has refused to read section 16 as requiring a showing in all circumstances of the "competitive relationship between two shippers who are charged different prices." *New York Freight Forwarders & Brokers Ass'n v. Federal Maritime Comm'n*, 337 F. 2d 289 (2d Cir. 1964), cert. denied, 380 U. S. 914 (1965). The Court agreed with the position taken there by the Commission that a practice of "charging shippers disguised markups of widely varying amounts on substantially identical services, without justification [was] * * * prima facie discriminatory in a regulated industry." 337 F. 2d at 299.

* Throughout our adversaries' briefs various assertions of fact are made which space limitations do not permit us to answer in the body of this brief. Should the Court care to go into any of these factual matters in more detail, we have replied in an appendix to those given most emphasis by opposing counsel.

Thus, we argue, the Commission was clearly in error in viewing the absence of any difference in treatment among automobiles as dispositive of our contention that MTC, in conjunction with other members of PMA, is subjecting petitioner's cargo to unreasonable prejudice and disadvantage in allocating the cost of the Mech Fund.*

Had the Commission applied to the facts of this case, as found by it and as established by uncontested evidence, the same rule of law which it had enunciated in the *Freight Forwarders* case and which has been approved by the Second Circuit, it would have had to find a violation of section 16 (VW Br. 41).

Our opponents deal with the *Freight Forwarders* case in very different ways. MTC ignores it altogether (MTC

* The Commission attempted to make its cursory dismissal of section 16 more acceptable by predicated its decision on what "Volkswagen itself admits" regarding "all of the relevant case law" (R. 9 [675a-676a]). As elsewhere, its description of our position is misleading. Before the Examiner (when the *Freight Forwarders* case had not yet been decided), we acknowledged that under decisions of predecessor agencies of the Federal Maritime Commission (not under "all of the relevant case law") section 16 has been held inapplicable in the absence of competitive injury. However, we indicated that we intended to ask for a reconsideration of these rulings should the case reach the Commission (Complainant's Brief and Proposed Findings of Fact and Conclusions of Law, p. 40, June 1963). When that occurred, we directly challenged the validity of these purely administrative precedents saying:

"VW respectfully submits that there is no warrant in the legislative history of the statute for the narrow interpretation which has been placed upon its language. This interpretation we believe substantially defeats the legislative intent. All the reasons that establish a violation of section 17 by MTC show that section 16 has also been breached" (Complainant's Memorandum of Exceptions and Brief, p. 70).

In our earlier brief to this Court we ignored the distortion of our position by the Commission since we deemed it immaterial. We allude to it now only because our adversaries appear to attach some substantive significance to these facts (FMC Br. 21; MTC Br. 16; PMA Br. 37).

Br. 15-16); PMA urges that it does not mean what it says (PMA Br. 36 n. 35); Commission counsel attempt to distinguish it on factual grounds (FMC Br. 22-23).

Whether or not, as PMA contends, the Commission and the Second Circuit could have reached the same result in the *Freight Forwarders* case as they did without repudiating the principle that "competitive cargo" must be shown to have been preferred, the fact is they did not. On the contrary, both rejected such principle as a limitation on the application of section 16. The approach both took is irreconcilable with the principle's continued vitality.

Significantly, nine of the ten decisions cited by PMA as applying the rule rejected in the *Freight Forwarders* case antedate that decision. In a more recent opinion, *Joint Agreement Between Member Lines of the Far East Conference and the Member Lines of the Pacific West-bound Conference*, F.M.C. Docket No. 872 (July 28, 1965), neither competitive cargo, nor the requirement of proof regarding such cargo, are ever discussed by the Commission in reaching the conclusion that section 16 has been violated.

Taking a totally different tack from PMA, counsel for the Commission seek to escape the *Freight Forwarders* rule by arguing cryptically that here "the assessments bear a direct relationship to the type of cargo carried or handled, and thus a competitive relationship must be shown" (FMC Br. 23).

Implicit in this argument is an admission that the Commission erred in assuming that if competitive cargo is not preferred, section 16 has no application. As its counsel now indirectly concede, the Commission was under a duty to determine, regardless what the record showed concerning competitive injury, whether, as in the *Freight Forwarders* case, PMA's formula was not *prima facie* discriminatory in a regulated industry.

The Commission's error of law in failing to apply the appropriate standard cannot be rectified by its counsel.

Furthermore counsels' reasons for regarding the assessments here involved not to be *prima facie* discriminatory will not bear examination. Counsel suggest that the standard laid down in *Freight Forwarders* does not apply because "the assessments bear a direct relationship to the type of cargo carried or handled" (FMC Br. 23). But what *Freight Forwarders* makes critical is the relationship of the assessments or charges to the services rendered with regard to the type of cargo carried or handled.

Automobiles which derive no greater benefit from the Mech Fund than other cargo (R. 10 [676a-677a]), including bulk cargo, scrap metal, coastwise shipments and coastwise logs and lumber, pay five, ten and one hundred times as much. This is *prima facie* discriminatory in a regulated industry. The Commission clearly erred in holding otherwise, by invoking a rule which in similar circumstances it has held to be inapplicable.

POINT III

Our adversaries cannot support the Commission's conclusion that section 17 has not been violated.

Our attack on the Commission's conclusion that section 17 is inapplicable builds, in large measure, on facts found by the Commission or not open to dispute. One such fact is that automobiles pay substantially more than other cargo. On this the Commission found that general cargo, including automobiles, carry a higher assessment than bulk cargo or coastwise lumber (R. 3 [669a-670a]).* Another such fact is that automobiles are made the subject of special treat-

* In fact, the record establishes through wholly uncontroverted evidence, on which the Commission failed to make any finding, that, measured by the only available standards, i.e., cost of labor and total cost of discharge, automobiles pay *ten times* as much, proportionately, as the next highest classification, i.e., general cargo (VW Br. 6-7).

ment. Here, again, the Commission's findings are in accord: "although other cargo is assessed as manifested, automobiles are always assessed on a measurement basis" (R. 10 [676a-677a]). The third is that automobiles receive no greater benefits than any other cargo from the Mech Fund plan. The Commission did not disagree. It found that "as there is little likelihood of mechanical improvements in the method of unloading automobiles, auto shippers will probably receive only general benefits from the fund plan, such as freedom from strike or slowdown" (R. 10 [676a-677a]).

None of our opponents attempt to explain what role is left section 17 by the Commission's interpretation that "just and reasonable regulations and practices" comprehend discriminatory rules and unequal treatment. None deal with the facts as found by the Commission. All agree, however, that too close judicial scrutiny is undesirable, either because the "substantial evidence" rule protects the Commission's finding that section 17 was not violated (PMA Br. 38-42; MTC Br. 18) or because "this is an area where the expertise of the agency is entitled to the greatest weight" (FMC Br. 25).

In fact, the only function of the substantial evidence rule insofar as this aspect of the case is concerned is to preclude PMA's elaborate efforts directed to showing "the special and very substantial benefits inuring to petitioner" from the Fund plan (PMA Br. 40, Appendix, 4-6). This is not an issue new to this case. Much of the evidence introduced by PMA before the Commission had as its purpose to show what benefits petitioner received from the Fund plan. If, in fact, the benefits to petitioner equalled the burden imposed upon it, proof thereof would undoubtedly have been offered by PMA. The most favorable finding to PMA which the record permitted, however, was that petitioner had received some benefits from the Fund plan. PMA cannot now go behind this finding to support the Commissioner's conclusion on the very different factual

and legal ground that the benefits derived by petitioner from the Mech Fund equalled the burdens imposed upon it.

PMA's other arguments are no better. It suggests that section 17 has no application at all to "stevedore contracts" but applies only to marine terminals (PMA Br. 41-42). This is but a variant of the argument that MTC is not subject to the Act as "another person." Neither the Hearing Examiner nor the Commission thought section 17 inapplicable to MTC. It is impossible to read that section, which embraces all practices relating to the "receiving, handling, storing or delivering of property," as excluding the extensive services performed for petitioner by MTC. And the Fund covers the employees engaged in every aspect of these services.

Commission counsel, although not disputing the applicability of section 17 to MTC, defend the results reached by the Commission by focusing solely on the reasonableness of MTC's action in passing on the Mech Fund charge to petitioner, disregarding entirely the unreasonableness of the charge itself. According to counsel, the method by which the assessments are computed can be ignored, because "petitioner is charging MTC and not PMA with the violation" (FMC Br. 24).

Examination of our complaint to the Commission will show that it is not so limited (Pars. 3-8 [12a-15a]). We are charging all members of PMA, including MTC, with engaging in unreasonable practices. At issue here is the reasonableness of the method of computing the assessments,* as well as the reasonableness of demanding payment from customers in accordance with such computation.

* In the face of the fact that at every stage of this proceeding we have been challenging PMA's method of allocation because of the disproportionate burden it imposes on our cargo, the Commission somehow derived an admission, which we never made, that "there is no statutory requirement that all users of a facility be assessed equally" (R. 10 [676a-677a]). This so-called "admission" now takes an equally prominent place in Commission counsel's brief (FMC Br. 24).

The Commission indicated that it might take a different view of the assessment if the lack of relationship between benefits and burdens was the product of deliberate design (R. 10 [676a-677a]). It thought such design to be negated here by the fact that the "assessment * * * has been levied in its present form because it was necessary in the business judgment of respondents [MTC] to do so" (*ibid.*).

What little role, however, MTC's "business judgment" played in the arrangements in question appears clearly from that company's brief in this Court. Caught between PMA and the ILWU, it had no choice but to accept PMA's direction. As it observed, had it resigned from PMA, it would have jeopardized its "continued ability to operate" without avoiding "the union's insistence on a contract imposing at least similar, if not, greater, burdens" (MTC Br. 16). Alternatively, had it deviated from the PMA plan, it would have been placed at a competitive disadvantage (*ibid.*).

Could there be any more convincing proof both of the anticompetitive nature of the Mech Fund plan and its repugnance to our national policy? Acting in combination through PMA, the maritime industry is fixing charges from which none can deviate because of the power inhering in PMA.

When prices for services are fixed, the antitrust laws are violated. *United States v. Trans-Missouri Freight Ass'n*, 166 U. S. 290 (1897); *United States v. National Ass'n of Real Estate Boards*, 339 U. S. 485 (1950). To agree regarding some element entering into the final price is price fixing. *United States v. United Liquors Corp.*, 149 F. Supp. 609 (W. D. Tenn. 1956), *aff'd per curiam*, 352 U. S. 991 (1957); *California Retail Grocers & Merchants Ass'n, Ltd. v. United States*, 139 F. 2d 978 (9th Cir. 1943). "An agreement as to the elements used to determine prices or as to specific conditions of sale is just as illegal as an agreement on the prices themselves." Kronstein & Miller, *Regulation of Trade* 912 (1953).

The shelter normally given by section 15 to collective action in the maritime industry cannot be invoked here. Either, as the Commission held, it has never been available or, if petitioner is correct, it has been forfeited by the failure to submit PMA's agreement for approval to the Commission as that section requires. Nor can any protection be derived from the exemption carved out of antitrust for labor organizations. MTC's participation in an illegal price fixing agreement in violation of the Sherman Act is *ipso facto* an unreasonable practice under section 17. What is illegal cannot be reasonable.

But, in fact, it is not necessary to go beyond the requirements of the Shipping Act to condemn the inequitable practices to which MTC, voluntarily or involuntarily, has made itself a party. As a member of PMA, MTC is participating in a plan by which, under the facts found by the Commission, automobiles, in return for the same benefits, are taxed more than other cargo and are the subject of a discriminatory rule.

The issue here is not the "reasonableness" of MTC in knuckling under to PMA, but the "reasonableness" of what PMA is demanding. It is absurd to claim that a practice is "reasonable" because those who engage in it can impose it through their irresistible collective power. The Shipping Act of 1916 was enacted to interpose the protection of the Government between shippers, like petitioner, and just such overwhelming private force as PMA exercises. It runs directly counter to the legislative purpose to stamp as "reasonable" whatever collective action has the power to coerce. Had the Commission carried out its responsibility under the statute it would have had to conclude that section 17 had been violated.

CONCLUSION

The issues of statutory construction involved in this proceeding are of transcendent public importance. To avoid invalidating PMA's tax, the Commission has permanently crippled the Shipping Act of 1916. It has rendered that statute wholly ineffectual to accomplish the purposes for which it was enacted. Administrative expertise cannot be invoked to shield from judicial scrutiny such patent error.

"Reviewing courts are not obliged to stand aside and rubber-stamp their affirmance of administrative decisions that *they deem inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute*. Such review is always properly within the judicial province, and courts would abdicate their responsibility if they did not fully review such administrative decisions." *N.L.R.B. v. Brown*, 380 U. S. 278, 291-292 (1965). (Emphasis supplied.)

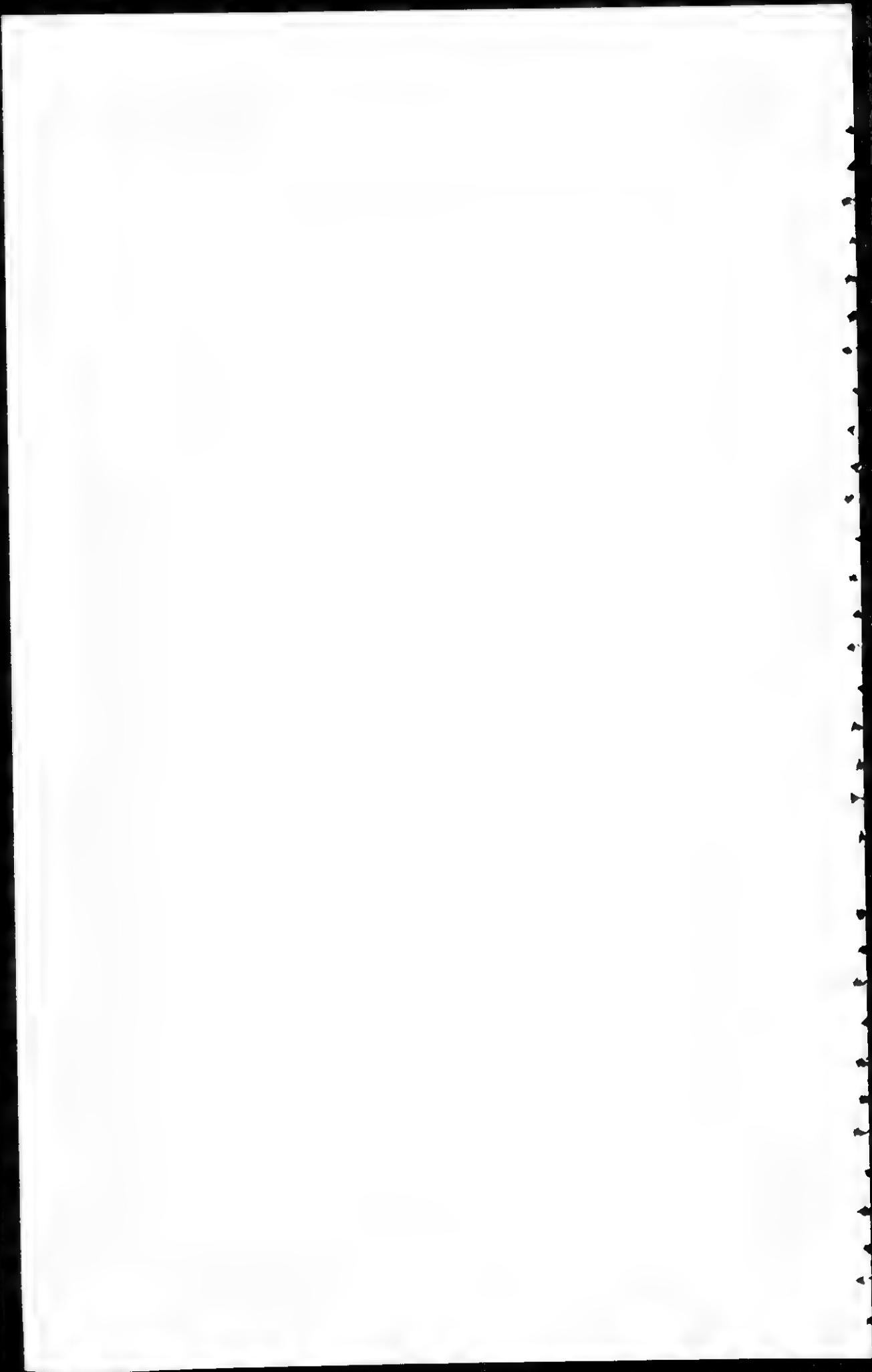
Dated: May, 1966.

Respectfully submitted,

RICHARD A. WHITING
ROBERT J. CORBER
STEPTOE & JOHNSON
Attorneys for Petitioner

WALTER HERZFELD
CECELIA H. GOETZ
BERNARD J. WALD
HERZFELD & RUBIN

STANLEY J. MADDEN
PILLSBURY, MADISON & SUTRO
of Counsel



APPENDIX

Scattered throughout our opponents' briefs are various factual and legal assertions raising for the most part shadow issues whose resolution is immaterial to this appeal. Without attempting to deal with them all, we shall address ourselves to those on which our adversaries seem to place the most weight.

The Similarity Between the Fund Assessments and PMA Dues

Our opponents apparently attach great importance to the fact that PMA has always collected a portion of its operating dues by an assessment similar in kind to that imposed for the collection of the Mech Fund, that is, by a tax on tonnage (PMA Br. 19, 44-45; FMC Br. 5-7; MTC Br. 18); that PMA, in a 1958 letter to its membership, allegedly took the position that in calculating dues on automobiles measurement tons were to be used (FMC Br. 6); that MTC has always paid dues on that basis (*ibid.*); and that petitioner has reimbursed MTC the cost of these dues (FMC Br. 8).

Of what legal significance is any of the foregoing? The issue involved in this proceeding is not the legality of PMA's dues but of the Mech Fund assessments. How is the legality of the Mech Fund assessments demonstrated through their purported identity with earlier exactions, the legal status of which is entirely obscure?

In the same vein, what difference does it make how petitioner treated the earlier demand involving a much smaller sum of money, in view of the fact that the only alternative was a proceeding of the length and expense of this one?

The entire issue is a red herring. Moreover, the facts regarding the PMA dues are far from clear since petitioner had no reason to explore in detail this purely peripheral matter. In fact, when it attempted to do so by

requesting production of the relevant documents, PMA objected and petitioner did not press its demand (86-87 [86a-87a]). Enough emerged in the record, however, to show that in making automobiles the subject of a peculiarly discriminatory rule for purposes of the Mech Fund by insisting that they be taxed on the basis of measurement tons, regardless how manifested, PMA was not simply continuing established practice. While it is true that MTC calculated PMA's dues on the basis of measurement tons (244-245 [154a]), inquiry made by PMA early in 1961 disclosed that most of the companies discharging petitioner's automobiles did not (82-84 [83a-85a]). At least one carrier regularly reported on the basis that each automobile equalled one ton (Ex. 12 [493a-494a]). Since PMA did not see fit to put into the record the 1958 letter there is no way of determining what in fact it required.

Finally, it would make no difference if the uniquely harsh rule for measuring tonnage of petitioner's automobiles for the purpose of PMA assessments had its origin in 1958 for dues purposes or was first adopted in 1961. Whatever reasons PMA had for discriminating against petitioner's automobiles in 1961 existed equally as well in 1958. In the earlier period, just as in the later one, petitioner's cargo moved in the main by chartered vessel and was not transported by the common carriers dominating the membership of PMA. Thus, to the extent that such cargo could be made to carry the burden of supporting the administration of PMA, the carrier membership of PMA benefitted.

The Army's Alleged Satisfaction With the Mech Fund Assessments

To prove the non-discriminatory character of the Mech Fund, PMA's counsel cited "the response of the Army to the plan" (PMA Br. 13). According to counsel, the Army "withdrew its objections" after being satisfied that the cost

of the Fund was being distributed by a "fair and equitable method" (PMA Br. 14). This, we are advised, demonstrates "that the funding arrangement did not afford special privileges or advantages" (PMA Br. 13). Obviously, how unidentified Army officials reacted to the Mech Fund plan does not take it outside section 15, nor constitute even an administrative adjudication that the plan does not violate sections 16 and 17.

But the claimed satisfaction of the Army with the plan is very questionable. Mr. Teige, whose testimony is the sole foundation for this elaborate edifice, said no more than that after his committee informed the Army that it was to be treated "in the same exact fashion that we treated the commercial operators . . . they seemed satisfied with that or, in any event, we heard nothing more about the auto complaint" (148 [120a-121a]). Nevertheless, PMA's internal memoranda show, as Commissioner Hearn pointed out, that PMA feared if petitioner obtained relief "the Army would be next in line; 'they are still querulous about the propriety of such contributions.' (Ex. 22 [507a-509a])" (H. 63 n. 4 [725a-726a]). Significantly, Commissioner Hearn concluded that PMA's minutes "reveal a co-operative working arrangement by members of PMA relating to the fixing or regulating of transportation rates, at least so far as automobiles and possibly Army cargo are concerned" (H. 64 [726a-727a]).

**Petitioner Does Not Contend That Man-Hours Must Be
Used to Spread the Cost of the Mech Fund**

Petitioner has never urged, as PMA asserts, "that the man-hour measure is the only reasonable and acceptable measure for the determination of labor costs" (PMA Br. 46). It has never taken on itself the authority to determine what would have been a fair and reasonable way of allocating the cost of the Mech Fund. That heavy burden does not lie upon it. In connection with section 15, its purpose has been from the beginning to demonstrate that the Com-

mission has a duty to review how such cost has been distributed by agreement by companies subject to its jurisdiction and to determine whether what has been done is compatible with the requirements of the Shipping Act. Only if the Commission assumes this duty, the existence of which it now denies, will it reach the question as to the propriety of the measure actually adopted by PMA.

Similarly, insofar as sections 16 and 17 are concerned, petitioner's purpose has been solely to demonstrate that the measure actually employed, adopted in a purely arbitrary and capricious fashion, produces results which are indefensible under the statute. It was never argued that a man-hour measure is the only reasonable or appropriate alternative. However, it has pointed out that it is one of a number of alternatives which were available to PMA which would have avoided the gross inequity produced by the discriminatory treatment of automobiles.

Various Points Raised by PMA Are Without Merit

1. PMA gives great emphasis to the fact that petitioner allegedly failed to take exception to certain specific findings of the Hearing Examiner (PMA Br. 7). PMA cites no authority for the importance it attaches to the alleged lapse and the weight it places on it is most singular in that PMA filed no exceptions at all itself.

In any event, the technicality upon which PMA relies has no merit whatsoever since petitioner's exceptions took issue with the Examiner's entire approach. (See, in particular, Nos. 3 [662a], 6, 7 and 8 [663a-664a]). Consequently, no significance can attach to the fact that objection was not specifically taken to every sentence on every page of his thirty-eight page opinion.

2. Answering our contention that the arrangements among the members of PMA are agreements "fixing or regulating transportation rates or fares," PMA distin-

guishes the cases we have cited on the ground that "all relate to direct fixing of terminal rates and charges; none relate to straight stevedore charges" (PMA Br. 10). This is reading a distinction into the Act which neither its language nor past precedents interpreting that language will support. The statute speaks of "transportation" rates, not "terminal" rates. Stevedoring is as much an element of transportation as terminal operations. Thus, an agreement "between persons subject to the Act to establish a stevedoring operation" is a section 15 agreement. *Associated-Banning Co. v. Matson Nav. Co.*, 5 F.M.B. 432, 434 (1958). Furthermore, as has been repeatedly pointed out, the Mech Fund is not confined to stevedoring operations but relates as well to labor employed in terminal operations.

3. PMA takes issue with our statement that liner interests control its affairs (PMA Br. App. 1). Nowhere, however, does it explain how any other result can be reached in view of the fact that its own internal records show that only 158 out of 396 votes belonged to stevedoring and terminal operators in 1960 (Compare Ex. 39 [525a-529a] with Ex. 46 [538a-553a]); only 198 out of 438 votes in 1961 (Compare Ex. 40 [530a-533a] with Ex. 47 [554a-570a]); and in 1962, 204 out of 433 (Compare Ex. 41 [535a-538a] with Ex. 48 [571a-587a]). The record is equally clear regarding its Board of Directors. PMA's vice-president testified that the majority in that body were "from the steamship lines, American flag and foreign" (58 [74a]). The carrier affiliations of the members of PMA's Mech Fund subcommittees are similarly incontrovertible (60 [75a-76a], 94-96 [89a-92a], Exs. 46 [538a-553a], 47 [554a-570a]). The Examiner's finding adverse to petitioner on the liner domination of PMA (I.D. 32 n. 42 [648a]) has no record support whatsoever.

5. Before the Commission, as well as before this Court, petitioner stressed the peculiar favorable treatment of

coastwise logs and lumber in order to show how PMA, a private industrial body, exercised governmental-like powers, to tax or not to tax as it deemed best. The fact that coastwise lumber pays about one-hundredth of what petitioner's automobiles do for the same benefits has been stressed to show the discrimination built into PMA's formula.

PMA, while not denying that its formula sets different rates for different cargo attempts to justify the preference shown coastwise lumber on the ground that cargo-handling operations involving this cargo "had been and continue to be burdened by an excessive penalty rate by ILWU contracts since the early fifties because of automation of cargo-handling in these operations" (PMA Br. 13 n. 9). But is this any reason why this cargo should pay less than other traffic for the new labor saving opportunities available in exchange for the Mech Fund?

The real reason for singling out coastwise logs and lumber for special treatment was the competitive situation. In this trade PMA's members meet competition both from non-PMA shippers and other forms of transportation (Ex. 2 L, p. 17 [366a-367a]). It is this competition which makes the coastwise transportation of logs and lumber "marginal business" (Ex. 10 [487-492]), rather than labor penalties. Therefore, PMA assessments were reduced in order not to handicap this trade further.

If logs and lumber pay less, however, other cargo must pay more to meet PMA's lump sum obligation. Is it proper and appropriate for a private body to force automobiles to subsidize other traffic? Is this the kind of decision to be made by the interested carriers alone on the basis of their self-interest?

6. In its brief, PMA suggests that MTC was not acting as its agent in demanding payment of the assessments from petitioner but was caught in the middle since if they were

"delinquent in contributions required under a labor contract" they would "risk job action by ILWU on all operations and PMA fines" (PMA Br. 34 n. 34). MTC, however, which is in the best position to explain its own conduct, never once refers to a fear of fines as motivating it (*Cf.* MTC Br. 2, 17). As the contemporary minutes of PMA's Board of Directors reflect, no fines were levied on MTC for failure to pay assessments on the cargo discharged for petitioner (Ex. 2H, p. 5 [357a]). Clearly, PMA has never had any intention of punishing MTC for its inability to collect from petitioner the PMA assessments.

SUPPLEMENTAL MEMORANDUM TO
ANSWERING BRIEF OF INTERVENOR
PACIFIC MARITIME ASSOCIATION

In the
UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 19,840

VOLKSWAGENWERK AKTIENGESELLSCHAFT,
Petitioner,
against
FEDERAL MARITIME COMMISSION and
UNITED STATES OF AMERICA,
Respondents,
PACIFIC MARITIME ASSOCIATION and
MARINE TERMINALS CORPORATION,
Intervenors.

On Petition to Review and Set Aside Order of the
Federal Maritime Commission

United States Court of Appeals
for the District of Columbia Circuit

FILED MAY 11 1966

Nathan J. Paulson
CLERK

Edward D. Ransom
Gary J. Torre
R. Frederic Fisher
Lillick, Geary, Wheat, Adams
& Charles

311 California Street
San Francisco, California 94104

1625 K Street, N.W.
Washington, D.C. 20006

Attorneys for Intervenor
Pacific Maritime Association

In the
UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit
No. 19,840

VOLKSWAGENWERK AKTIENGESELLSCHAFT,

Petitioner,

against

FEDERAL MARITIME COMMISSION and
UNITED STATES OF AMERICA,

Respondents,

PACIFIC MARITIME ASSOCIATION and
MARINE TERMINALS CORPORATION,

Intervenors.

On Petition to Review and Set Aside Order of the
Federal Maritime Commission

SUPPLEMENTAL MEMORANDUM TO
ANSWERING BRIEF OF INTERVENOR
PACIFIC MARITIME ASSOCIATION

By receipt of copy of letter dated April 27, 1966,
addressed to Walter H. Mayo, counsel for Federal Maritime
Commission, we have been supplied with a list of "corrections
and changes" to be included in petitioner's brief at the time

of its filing in printed form. One of such changes is material.

Paragraph 9 of the aforementioned letter has brought to our attention that an understandable typographical error caused a mis-citation in petitioner's preliminary brief at the footnote on page 13. We are now informed that its citation to "Exhibit 21, p.3" should read "Exhibit 2-I, p.3."

The footnote in question at page 13 of petitioner's preliminary brief served upon us, contains a false and unfounded charge that documents had been suppressed by Pacific Maritime Association. In footnote 33, page 34 of the printed brief already filed on behalf of intervenor Pacific Maritime Association, this false charge was answered insofar as it was supported by the citation in petitioner's preliminary brief.

The only provision of page 3 of Exhibit 2-I, which is the corrected citation, having any relevancy to petitioner's unfounded charge of suppression of documents is as follows:

"REPORT OF FUNDING COMMITTEE: The Chairman reported that a report has been filed by the Funding Committee under date of July 18, 1961, in accordance with action of the membership on January 10, 1961. This report states that the Committee, as of this time, has no new suggestion to make for changes in the present formula. The Funding Committee will continue to discuss this subject."

In refutation, we attach hereto as Exhibit 1 a facsimile copy of letter dated July 18, 1961 from Peter N. Teige,

Chairman of the Funding Committee to J. Paul St. Sure, President of Pacific Maritime Association. The copy of this document from which the attached facsimile was made was contained in the office files of the authors of this supplementary memorandum clipped together with other documents, all of which carry the following notation "Produced for Madden [San Francisco counsel for petitioner] from which materials were excerpt - balance not introduced."

The attached facsimile is the report referred to in Exhibit 2-I.

The original of the attached facsimile was physically delivered by the undersigned to Stanley J. Madden and Walter Herzfeld, counsel for petitioner, in response to petitioner's subpoena at the deposition of Kenneth Saysette. It was reviewed by said counsel and was not introduced in evidence, apparently being rejected as immaterial insofar as petitioner was concerned.

We submit that petitioner's willingness to exceed the record in order to raise false clouds of suspicion is consistent with its refusal to be bound by appellate procedure and its effort to reopen and retry ill-founded claims. We do not intend to answer further ill-founded charges of this type if petitioner now changes or adds to its citations.

We categorically deny that Pacific Maritime Association attempted to subvert the process of the Federal Maritime Commission's subpoena.

Dated: May 3, 1966.

Respectfully submitted,

Edward D. Ransom
Edward D. Ransom

Gary J. Toye
Gary J. Toye

LILLICK, GEARY, WHEAT, ADAMS & CHARLES
311 California Street
San Francisco, California 94104

Attorneys for Intervenor
Pacific Maritime Association

July 18, 1961

Mr. J. Paul St. Sure
President
Pacific Maritime Association
16 California Street
San Francisco 4, California

Dear Paul:

The ILWU Mechanization and Modernization Fund Committee of PMA, at the request of the Board of Directors, has had under study the problem of the assessment formula to be used to raise the monies needed for the Fund. Under the action of the membership on January 10, 1961, the present method of fund collection was to be given a trial of six months ending July 16, 1961. The Committee was to make any recommendations for changes prior to that time.

The Committee has met on a number of occasions to discuss this question. It has also submitted to the membership a letter seeking the views of the members on changes in the fund assessment formula.

After due consideration the Committee has no new suggestions to make for changes in the present formula. Considering the impact of the assessments and the variety of operations affected by the Mechanization and Modernization Agreement, there have been few objections to the operation of the formula. The principal dissenters appear to be those using small amounts of man-hours per ton such as bulk operators, carriers of large numbers of automobiles, and container operators.

The Committee therefore recommends that the present method of assessment be continued for another six-months period with the understanding that the Board of Directors may at any time request a restudy of the matter.

It is the Committee's observation that the principal difficulty under the present fund-raising procedures arises not because of the method of assessment being used but instead from the fact that the agreement raising the funds is between the members of PMA and not directly with the union. The result is that unless non-members are required to contribute

Mr. J. Paul St. Sure

-2-

July 18, 1961

the same rate as members or, alternatively, are encouraged to become members, there is an incentive, where the fund assessment is a material one in an operation, to perform longshore work outside of PMA. Again, it should be stressed that this arises from the fact that the industry wanted to determine for itself the method of fund-raising and not by reason of the method it then chose under that freedom. This inequality between members and non-members is, in the view of the Committee, a serious problem that is deserving of your immediate attention.

The determination of the Committee set forth in this letter represents the views of the entire Committee except one member who is out of the country and the member representing the Matson Navigation Company. The latter has indicated that he will send to you a separate communication stating his position on this matter.

Respectfully submitted,

Peter N. Teige
Chairman

cc: All Committee Members
All Directors

PNT/cb

OFFICE COPY

ANSWERING BRIEF OF INTERVENOR
MARINE TERMINALS CORPORATION

In the
UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 19,840

VOLKSWAGENWERK AKTIENGESELLSCHAFT,

Petitioner,

United States Court of Appeals
for the District of Columbia Circuit

against

FEDERAL MARITIME COMMISSION and
UNITED STATES OF AMERICA,

FILED MAY 15 1966

Respondents,

Nathan J. Paulson
CLERK

PACIFIC MARITIME ASSOCIATION and
MARINE TERMINALS CORPORATION,

Intervenors.

On Petition to Review and Set Aside Order of the
Federal Maritime Commission

United States Court of Appeals
for the District of Columbia Circuit

RECEIVED MAY 4 1966

William W Schwarzer
John Edward Hurley, Jr.
McCutchen, Doyle, Brown, Trautman
& Enersen

601 California Street
San Francisco, California 94108

Nathan J. Paulson
Clerk

Attorneys for Intervenor
Marine Terminals Corporation

QUESTION PRESENTED

In the opinion of intervenor, the question presented is:

Is there a rational basis for the order of the Commission determining that Marine Terminals Corporation ("MTC") by unilaterally including in its charges to its customers its full labor costs, including the cost of funding the mechanization and modernization provisions of the collective bargaining agreement, did not violate Sections 15, 16 or 17 of the Shipping Act of 1916 (46 U.S.C. Secs. 814, 815, 816)?

SUBJECT INDEX

	<u>Page</u>
STATEMENT OF CASE.....	1
SUMMARY OF ARGUMENT.....	3
ARGUMENT.....	4
I. THE SCOPE OF REVIEW IN THIS COURT IS LIMITED TO A DETERMINATION WHETHER THERE IS A RATIONAL BASIS FOR THE COMMISSION'S ORDER.....	4
II. THE COMMISSION HAS NOT FOUND MTC TO BE SUBJECT TO THE ACT FOR PURPOSES OF THIS CASE.....	8
III. THE COMMISSION'S FINDING THAT MTC WAS NOT A PARTY TO ANY "ADDITIONAL AGREEMENTS BY THE PMA MEMBERSHIP" TO PASS ON ASSESSMENTS TO CARRIERS OR SHIPPERS MUST BE SUSTAINED.....	10
IV. THE COMMISSION'S FINDINGS THAT MTC DID NOT VIOLATE SECTION 16 OR SECTION 17 OF THE ACT MUST BE SUSTAINED.....	15
A. Section 16.....	15
B. Section 17.....	17
CONCLUSION.....	19
APPENDIX.....	la

TABLE OF AUTHORITIES CITED

<u>Cases</u>	<u>Pages</u>
*Alcoa Steamship Company v. Federal Maritime Commission, 321 F.2d 756, 116 App. D.C. 143 (D.C. 1963)	5, 7, 8
Board v. Hearst Publications, 322 U.S. 111 (1944)	7n
*Consolo v. Federal Maritime Commission, U. S. ___, 86 S.Ct. 1018 (March 22, 1966)	4
Delaware Valley Marine Sup. Co. v. American Tobacco Co., 297 F.2d 199 (3rd Cir. 1961), cert. den. 369 U.S. 839 (1962)	15
*Evans Cooperage Co., Inc. v. Board of Commissioners, 6 F.M.B. 415 (1961)	18
Gray v. Powell, 314 U.S. 402 (1941)	7n
Greater Baton Rouge Port Commission v. United States, 287 F.2d 86 (5th Cir. 1961)	7
*Huber Mfg. Co. v. H. V. Stoomvaart M. "Nederland", 4 F.M.B. 343 (1953)	16
Independent Iron Works, Inc. v. United States Steel Corp., 322 F.2d 656 (9th Cir. 1963), cert. den. 375 U.S. 922 (1964)	14
*Johnson Pickett Rope Co. v. Dollar SS Lines, Inc., Ltd., 1 U.S.S.B. 585 (1936)	16
Joseph Singer v. Trans Atlantic Passenger Conference, 1 U.S.S.B. 520 (1936)	18
*Paraffine Companies, Inc. v. American Hawaiian SS Co., 1 U.S.M.C. 628 (1936)	16
Rochester Tel. Corp. v. U. S., 307 U.S. 125 (1939). States Marine Lines, Inc. v. Federal Maritime Commission, 313 F.2d 906, 99 App. D.C., 312 (D.C. 1963), cert. den. 374 U.S. 831 (1963)	7n 6, 8
Swayne & Hoyt, Ltd. v. U. S., 300 U.S. 297 (1937) ..	8
*Theatre Enterprises v. Paramount, 346 U.S. 537 (1954)	14

*Cases chiefly relied on are marked by asterisks.

Pages

Trans-Pacific Frtg. Conf. of Japan v. Federal Maritime Com'n, 314 F.2d 928 (9th Cir. 1963)....	6, 7n
Viking Theatre Corp. v. Paramount Film Distributing Corp., 320 F.2d 285 (3rd Cir. 1963), aff'd 375 U.S. 939 (1963).....	15

Statutes

Shipping Act of 1916, Title 46 United States Code

Section 1 (46 U.S.C. Sec. 801).....	8
Section 15 (46 U.S.C. Sec. 814).....	3, 6, 7, 8, 10
Section 16 (46 U.S.C. Sec. 815).....	3, 4, 7, 8, 15, 16
Section 17 (46 U.S.C. Sec. 816).....	3, 4, 7, 8, 17

Sherman Act, Title 15 United States Code

Section 1 (15 U.S.C. Sec. 1).....	13
-----------------------------------	----

In the
UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit
No. 19,840

VOLKSWAGENWERK AKTIENGESELLSCHAFT,

Petitioner,

against

FEDERAL MARITIME COMMISSION and
UNITED STATES OF AMERICA,

Respondents,

PACIFIC MARITIME ASSOCIATION and
MARINE TERMINALS CORPORATION,

Intervenors.

On Petition to Review and Set Aside Order of the
Federal Maritime Commission

ANSWERING BRIEF OF INTERVENOR
MARINE TERMINALS CORPORATION

STATEMENT OF CASE*

Marine Terminals Corporation ("MTC") is one of
over a hundred members of Pacific Maritime Association
("PMA"). (Exs. 46, 47, 48)** PMA is the bargaining

*Intervenor Marine Terminals Corporation concurs in petitioner's jurisdictional statement.

**"Ex." refers to exhibits in the record below. Numerals in parentheses refer to pages in the transcript below.
"I.D." refers to the initial decision. "R" refers to the Commission's decision.

agent for virtually all employers of waterfront and maritime labor on the West Coast. (342) For practical purposes, membership in PMA is essential for an employer to be able to do business in this field.

MTC performs stevedoring services for petitioner at San Francisco and Los Angeles. (203-204) Vessels chartered by petitioner to carry Volkswagen automobiles are discharged by MTC at these two ports. (203-204) Petitioner is a very important and valued customer of MTC.

The controversy between petitioner and intervenor PMA over the methods of financing the mechanization and modernization fund ("mech fund") established by the collective bargaining agreement with the International Longshore Workers Union places MTC in an embarrassing and unfortunate position. MTC considers its membership in PMA essential to its continued operation and is therefore bound to perform its obligations as a member. At the same time, it has no wish to alienate its important and valued customer.

Although MTC's presence in this case is essentially procedural, serving as a vehicle for petitioner's attack against PMA, it has been compelled to establish that it is beyond the ambit of these charges. The Commission so found and MTC's intervention here is solely for the purpose of upholding the Commission's order dismissing petitioner's complaint as to MTC.

Because of the tangential position occupied by MTC in this litigation, it seems neither necessary nor

appropriate to burden the Court with a lengthy brief which would in large part duplicate material found in the briefs of the other intervenors and respondents. Accordingly, this brief is confined narrowly to the issues directly affecting MTC.

SUMMARY OF ARGUMENT

I. The questions before this Court affecting MTC are mixed questions of law and fact. Whether MTC was a party to an unapproved Section 15 agreement, and whether the inclusion by MTC of the amount of PMA's assessments in its contract charges to petitioner violated Sections 16 or 17 of the Act are questions within the competence of the Commission, to be decided on the basis of the Commission's judgment and expertise. The Commission's determination must be sustained if supported by substantial evidence.

II. There has been no determination that the actions of MTC involved in this proceeding are subject to the Commission's jurisdiction at all. The Commission assumed, without deciding, that such jurisdiction exists. Hence, the Court could not in any case reach the conclusions urged by petitioner here.

III. The Commission, as well as its hearing examiner, correctly found that there was no evidence of any additional agreement among PMA members to pass on the mech fund assessments to their customers. The record refutes the existence of any such agreement and petitioner's argument that the Court should reach a contrary conclusion is

not only inadmissible at this stage of the proceeding but without record support.

IV. (a) Inasmuch as there is no claim that competitive cargo is receiving a preference or advantage, there can be no finding that Section 16 has been violated.

(b) Neither Section 16 nor Section 17 applies to charges made pursuant to private stevedore contracts in connection with chartered vessels. Moreover, the Commission's finding that petitioner receives benefits from the mech fund the assessments for which are included in MTC's labor costs and charges is supported by evidence and establishes that there has been no violation of Section 17.

ARGUMENT

I. THE SCOPE OF REVIEW IN THIS COURT IS LIMITED TO A DETERMINATION WHETHER THERE IS A RATIONAL BASIS FOR THE COMMISSION'S ORDER.

Petitioner's argument to this Court erroneously seeks a de novo consideration and determination of the issues before the Commission. The question before this Court, however, is not whether it would have reached the same conclusions as the Commission but simply whether the Commission's determination that MTC did not violate the Act has a rational basis.

The most recent authoritative statement of the correct standard of review of the Court of Appeals is found in Consolo v. Federal Maritime Commission, ___ U. S. ___, 86 S.Ct. 1018 (March 22, 1966). The Supreme Court there

said:

"In effect, the standard of review applied and articulated by the Court of Appeals in this case was that if 'substantial evidence' or 'the substantial evidence' supports a conclusion contrary to that reached by the Commission, then the Commission must be reversed. This standard is not consistent with that provided by the Administrative Procedure Act.

"Section 10(e) of the Administrative Procedure Act (5 U.S.C. §1009(e) (1964 ed.)) gives a reviewing court authority to 'set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, [or] an abuse of discretion . . . [or] (5) unsupported by substantial evidence. . . .' Cf. United States v. Interstate Commerce Comm'n, 198 F.2d 958, 963-964, cert. denied, 344 U.S. 893. We have defined 'substantial evidence' as 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' Consolidated Edison Co. v. Labor Board, 305 U.S. 197, 229. '[I]t must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.' Labor Board v. Columbian Enameling & Stamping Co., 306 U.S. 292, 300. This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Labor Board v. Nevada Consolidated Copper Corp., 316 U.S. 105, 106; Keele Hair & Scalp Specialists, Inc. v. FTC, 275 F.2d 18, 21.

"Congress was very deliberate in adopting this standard of review. It frees the reviewing courts of the time-consuming and difficult task of weighing the evidence, it gives proper respect to the expertise of the administrative tribunal and it helps promote the uniform application of the statute." (86 S.Ct. at pp. 1026-1027)

This Court has followed this standard in the past in reviewing orders of the Commission. In Alcoa Steamship Company v. Federal Maritime Commission, 321 F.2d 756, 116 App. D.C. 143 (D.C. 1963), the court affirmed an order approving a pooling agreement, saying:

"These findings by the Commission represent its best effort to measure the effects of the agreement in relation to petitioners. They are supported by substantial evidence in the record, and we have no basis for rejecting them without substituting our judgment in this specialized area for that of the body best qualified to exercise it." (321 F.2d at p. 760)

To the same effect, see States Marine Lines, Inc. v. Federal Maritime Commission, 313 F.2d 906, 908, 99 App. D.C. 312 (D.C. 1963), cert. den. 374 U.S. 831 (1963).

This standard is applicable where, as here, the issue before the Commission is whether "certain statutory requirements apply to certain individuals or groups." Trans-Pacific Frqt. Conf. of Japan v. Federal Maritime Com'n, 314 F.2d 928, 935 (9th Cir. 1963). In that case, States Marine Lines, Inc. had filed a complaint with the Commission charging the conference with violation of Section 15 by illegally imposing a fine on a member. The Commission upheld the complaint and its action was sustained by the Court of Appeals which held:

"The Commission was an administrative body set up for the purpose of dealing administratively with the problems presented from time to time under the Shipping Act. Its function in this respect was not unlike similar functions performed by the National Labor Relations Board, the Federal Communications Commission, and other commissions created by act of Congress. It has long been recognized that such an administrative body has a broad discretion in effectuating the policies of the Act creating the Commission to determine whether certain statutory requirements apply to certain individuals or groups. In making those decisions such administrative bodies are not limited by common law concepts. The question always is whether the determination of the board or commission has 'warrant in the record' and a

reasonable basis in law.' National Labor Relations Board v. Hearst Publications, 322 U.S. 111, 64 S.Ct. 851, 88 L.Ed. 1170; Rochester Tel. Corp. v. United States, 307 U.S. 125, 59 S.Ct. 754, 83 L.Ed. 1147; Gray v. Powell, 314 U.S. 402, 62 S.Ct. 326, 86 L.Ed. 301." (314 F.2d at p. 935)*

See, also, Alcoa Steamship Company v. Federal Maritime Com., supra, upholding an order approving a pooling agreement under Section 15.

A fortiori, the Commission's determination under Sections 16 and 17 that petitioner was not subjected to undue and unreasonable prejudice or disadvantage and that the assessments did not constitute an unjust or unreasonable practice must be sustained if supported by substantial evidence. In Greater Baton Rouge Port Commission v. United States, 287 F.2d 86 (5th Cir. 1961), the court upheld an order under Section 17 as "supported by sufficient evidence considering the record as a whole". It specifically refused

*The TPFCJ case involved the mixed question of law and fact whether the so-called Neutral Body, through which the fine had been imposed, was "employed" by a member of the Conference. Similarly, the cases cited and relied on by the court involved mixed questions of law and fact: Board v. Hearst Publications, 322 U.S. 111 (1944), whether newsboys are "employees" within the meaning of the National Labor Relations Act; Rochester Tel. Corp. v. U. S., 307 U.S. 125 (1939), whether Rochester was "under the control" of New York Telephone Company and hence subject to the Communications Act of 1934; Gray v. Powell, 314 U.S. 402 (1941), whether a railroad was a "producer" of coal within the meaning of the Bituminous Coal Act of 1934. These cases are direct authority for the proposition that the same standards of review apply to the Commission's determination here that there were no agreements subject to Section 15.

to consider the petitioner's policy arguments, saying that this "would take away, too, the Board's function and arrogate it to us. This we will not do if there is a reasonable basis for the Board's decision." (287 F.2d at p. 95) See, also, States Marine Lines, Inc. v. Federal Maritime Com., supra at p. 908 (Section 17 order upheld on review); Alcoa Steamship Company v. Federal Maritime Com., supra (Section 15 order determining agreement not to be unjustly discriminatory or unfair upheld); Swayne & Hoyt, Ltd. v. U. S., 300 U.S. 297 (1937) (Section 16 order finding rates to be unduly prejudicial upheld).

The law is clear and there is no need to belabor the point. Petitioner having failed to show that the Commission's order is not supported by substantial evidence, the order must be sustained.

II. THE COMMISSION HAS NOT FOUND MTC TO BE SUBJECT TO THE ACT FOR PURPOSES OF THIS CASE.

Petitioner's brief ignores the fact that the Commission assumed, without deciding, that MTC is an "other person" within the meaning of the Act. (R. 7) Inasmuch as petitioner's complaint was dismissed, it was not necessary to decide this question.

From the outset of these proceedings, MTC has denied such jurisdiction. Section 1 of the Act defines an "other person subject to this Act" to be anyone "carrying on the business of forwarding or furnishing wharfage, dock,

warehouse or other terminal facilities in connection with a common carrier by water." Whatever other activities MTC may engage in, this case and this record indisputably relate only to its services as a contract stevedore in discharging cargoes. (301) The assessments in issue have nothing to do with forwarding or furnishing wharfage, dock, warehouse or terminal facilities. They relate solely to MTC's cost of hiring longshoremen to handle petitioner's cargo. (253-254; Ex. 56; I.D. 6, 14) Moreover, petitioner's interest in this case is as a shipper operating chartered vessels, not as a shipper on common carrier vessels. (See, Pet. Br., p. 45; 158; Ex. 52) To the extent petitioner uses common carrier vessels at all, the burden of the assessment falls on the common carrier and common carriers and the charges to them are not involved in this case. Inasmuch as MTC's activities which are the subject of this case consist of furnishing stevedore services in connection with chartered vessels, and pursuant to private contract, they fall outside of the Act. (253-254; I.D. 9)

Because the question of jurisdiction over MTC remains unresolved, and, if resolved, must be resolved in MTC's favor, it would be inappropriate for this Court to make any determination adverse to MTC, whatever view it may take of the other issues in the case.

III. THE COMMISSION'S FINDING THAT MTC WAS NOT A PARTY TO ANY "ADDITIONAL AGREEMENTS BY THE PMA MEMBERSHIP" TO PASS ON ASSESSMENTS TO CARRIERS OR SHIPPERS MUST BE SUSTAINED.

Petitioner contends in Point II of its brief that even if the Commission were sustained in its conclusion that the PMA mech fund agreement is not covered by Section 15, it erred in failing to find an additional agreement among members to pass on the PMA assessments to their customers. (Pet. Br., pp. 36-39) In this respect, the majority of the Commission found:

"What must be demonstrated before a section 15 agreement may be said to exist is that there was an additional agreement by the PMA membership to pass on all or a portion of its assessments to the carriers and shippers served by the terminal operators.

"The record is devoid of evidence showing the existence of such an additional agreement. The record at most shows that some stevedores expressed the opinion that it might be necessary to pass on the assessment in the stevedoring rate to their customers. That these opinions were the basis for an agreement as to the manner of assessing their customers is denied by statements of witnesses for both PMA and respondents. Such conclusion is further vitiated by the actions of respondent and perhaps other terminal operators, who were willing to absorb a part of the assessment.

"To hold that a section 15 agreement existed on this record would require us to disregard explicit statements to the contrary as well as actions on the part of both the common carrier members of PMA and respondents inconsistent with the existence of such an agreement. We would moreover, be obliged to reach the anomalous result of finding an agreement in spite of both testimony and conduct negating such an agreement, and then finding that such conduct was a breach of the agreement. It seems much more logical and less contrived simply to conclude that there was no agreement on the part of PMA members to pass on the 'Mech' fund assessments." (R. 9)

The pertinent findings of the hearing examiner as set forth in the initial decision were as follows:

"There is no substantial evidence to show that the actions of either the PMA membership or the Board of Directors or the Committee after January 10, 1961 was intended to do more than establish a method of assessment of the membership for contributions to the Mech Fund. As directed by the membership the Board of Directors on January 16, 1961 established a Mech Fund rate to be paid by the membership. On January 17, 1961 the membership was notified in detail about the Mech Fund plan and its assessments. Thereafter the assessment was levied by PMA against its members. There is no substantial evidence to show that the PMA members as such agreed among themselves how this assessment was to be treated after it was made, or that PMA issued any directions to any PMA member as to how it was to handle the assessment after it was made.

"The evidence is clear that the tonnage dues assessed by PMA of its membership was in turn charged by the PMA membership to the shipper and the carrier in the rates; and that this had been the practice since the tonnage tax was put into effect. The evidence is also clear that the Work Improvement Fund Committee was aware of this fact. There is no substantial evidence to show, however, that either the Board of Directors, the Committee or the PMA membership intended that this custom or practice was to be incorporated in or apply to the Mech Fund charge. Had there been such an intention it would have been reasonable and simple to say so in either the report or the resolution. The chairman of the Work Improvement Committee and the Vice President of Respondents each testified that there was no understanding in the Committee or among the PMA members that the Mech Fund assessment shall be passed on to the customer by the PMA members.

"That the January 10, 1961 agreement did not include agreement that the Mech Fund charge was to be passed on by the PMA members seems clear from the actions and events that occurred involving the Respondents and the VW charge. The Respondents admittedly were aware that the Mech Fund charge was their obligation as a PMA member. They also knew that they were 'entirely free to absorb assessments' if they so desired. Respondents and other stevedoring contractors expressed their uniform opinion that they could not absorb the Mech Fund and the

indications were that it should be passed on to the customer. Thereafter, Respondents and other stevedoring contractors included the whole Mech Fund charge in their rate to Volkswagen. Some time afterward, Respondents entered negotiations with Volkswagen for the establishment of a new rate wherein Respondents would absorb part of the Mech Fund. This offer Volkswagen rejected. These discussions and actions would have been so much surplusage if the January 10, 1961 agreement had provided that the Mech Fund charge was to be passed on to the customer." (I.D. 23-24)

Petitioner contends that in reaching these conclusions, the Commission "misread the record". (Pet. Br., 36)

(36) Petitioner cites no evidence, however, to support this contention, let alone evidence which would show that the Commission's decision lacks a rational basis. The substance of petitioner's argument is that there was an understanding to pass on the assessments "because when MTC and the other PMA members voted these assessments they knew that they could not pay them without increasing their charges to petitioner." (Pet. Br., 37)

It is clear that petitioner's attack aims not at any asserted lack of substantial evidence to support the Commission's conclusion but at the interpretation placed on the evidence by the Commission. Petitioner asks the Court in effect to give the evidence a "reading" different from the "misreading" given it by the Commission. This the Court cannot do if it is to remain within the proper limits on the scope of review of Commission orders. (See, pp. 4-8, supra)

Moreover, the conclusion reached by the Commission is the only proper one. Petitioner argues that because of

the relative size of the assessments "there was no need to secure explicit agreement regarding action to which there was no alternative." (Pet. Br., 37)* This type of argument has been repeatedly and consistently rejected by the courts in cases arising under Section 1 of the Sherman Act raising the analogous question whether the evidence showed the existence of an agreement, combination or conspiracy. The courts have always held that economic circumstances compelling parallel action by competitors in their self-interest are not sufficient to permit the drawing of an inference that an agreement exists. There must be additional evidence of at least a clear invitation to agree and conduct constituting acceptance before an agreement may be found.

"The crucial question is whether respondents' conduct toward petitioner stemmed from independent decision or from an agreement, tacit or express. To be sure, business behavior is admissible circumstantial evidence from which the fact finder may infer agreement. * * * [Citations omitted.] But this Court has never held that proof of parallel business behavior conclusively establishes agreement or, phrased differently, that such behavior itself constitutes a Sherman Act offense. Circumstantial evidence of consciously parallel behavior may have made heavy inroads into the traditional judicial

*The record facts are that in the course of PMA membership meetings, various stevedore contractors discussed the mech fund assessments as matters of vital importance to them. (240) Those who participated in these discussions talked in generalities, questioning how the assessments could be met, but no questions were answered and no agreements or understandings resulted. (247-248, 428, 438) In later billing the assessment to petitioner, MTC acted independently and without knowledge of or reference to the actions of others. (429, 437) The record is silent with respect to what action other stevedores took.

attitude toward conspiracy; but 'conscious parallelism' has not yet read conspiracy out of the Sherman Act entirely.

* * *

"Here each of the respondents had denied the existence of any collaboration and in addition had introduced evidence of the local conditions surrounding the Crest operation which, they contended, precluded it from being a successful first-run house. They also attacked the good faith of the guaranteed offers of the petitioner for first-run pictures and attributed uniform action to individual business judgment motivated by the desire for maximum revenue. This evidence, together with other testimony of an explanatory nature, raised fact issues requiring the trial judge to submit the issue of conspiracy to the jury."

Theatre Enterprises v. Paramount,
346 U.S. 537, 540-542 (1954).

"The mere fact that two or more of the defendants dealt with plaintiff in a substantially similar manner does not support an inference of conspiracy, even though each knew that the business behavior of another or the others was similar to its own. Theatre Enterprises, Inc. v. Paramount Film Distrib. Corp., 346 U.S. 537, 540-541, 74 S.Ct. 257, 98 L.Ed. 273 (1954). Like businesses are generally conducted alike and, as the trial judge correctly stated, similarity in operations lacks probative significance unless present 'under circumstances which logically suggest joint agreement, as distinguished from individual action.' See Fox West Coast Theatres Corp. v. Paradise Theatre Bldg. Corp., 264 F.2d 602 (9th Cir. 1958).

"The inference of conspiracy, based upon the defendants' approximately simultaneous change in their manner of dealing with plaintiff, might have been permissible in the absence of evidence showing that their respective actions were prompted by some fact other than mutual understanding or agreement. However, here it appears beyond question that outside factors dictated the change."

Independent Iron Works, Inc. v. United States Steel Corp., 322 F.2d 656, 661 (9th Cir. 1963), cert. den. 375 U.S. 922 (1964).

See, also, Viking Theatre Corp. v. Paramount Film Distributing Corp., 320 F.2d 285, 299 (3rd Cir. 1963), aff'd 375 U.S. 939 (1963);

Delaware Valley Marine Sup. Co. v. American Tobacco Co., 297 F.2d 199 (3rd Cir. 1961), cert. den. 369 U.S. 839 (1962).

All that the record shows in this case is that by reason of the action of PMA over which it had no control, MTC (as well as other PMA members) were faced with an additional cost of doing business, to wit, a contribution to the mech fund established under a collective bargaining agreement. Obviously, MTC, just as all members, had to make provision for the payment of this additional labor cost like any other cost of doing business. Petitioner concedes that MTC was free to make whatever provision it liked--it could pass on all of the cost or only some portion of it. (Pet. Br., 39) And petitioner points to no evidence which even suggests that MTC did not act independently or that it agreed or was asked or invited to pass on all or any part of this cost to its customers or even that there was parallel action. Thus, had the Commission found on this record that an agreement existed, the finding would have been clearly erroneous.

IV. THE COMMISSION'S FINDINGS THAT MTC DID NOT VIOLATE SECTION 16 OR SECTION 17 OF THE ACT MUST BE SUSTAINED.

A. Section 16.

In Point III of its brief, petitioner contends that MTC violated Section 16 by including in its charges

to petitioner its full costs under the collective bargaining agreement, including the cost of funding the mech fund. The contention is as startling as it is unfounded.

As previously pointed out, the activities of MTC involved in this case are stevedoring services rendered to petitioner in connection with unloading chartered vessels. (See, pp. 8-9, supra) These services were performed pursuant to private contract negotiated between petitioner and MTC. Having voluntarily entered into this arrangement, petitioner cannot be heard now to attack it as unlawful.

The Commission correctly found:

"Volkswagen itself admits that all of the relevant case law requires a showing that competitive cargo has been preferred to sustain an allegation of a violation of Section 16. It further admits that its automobiles have not been subjected to 'prejudice or disadvantage' as compared to other automobiles, and that 'there is no other cargo classification in competition with automobiles.' We therefore uphold the Examiner in finding no violation of section 16." (R. 9)

An unbroken line of decisions spanning a period during which the Act was amended by Congress supports the Commission's conclusion. Huber Mfg. Co. v. N. V. Stoomvaart M. "Nederland", 4 F.M.B. 343 (1953); Paraffine Companies, Inc. v. American Hawaiian SS Co., 1 U.S.M.C. 628 (1936); Johnson Pickett Rope Co. v. Dollar SS Lines, Inc., Ltd., 1 U.S.S.B. 585 (1936). No basis exists for a reversal by this Court in this case of the established and approved administrative construction of Section 16.

B. Section 17.

Point IV of petitioner's brief charges MTC with violation of Section 17. That charge must fail for the reasons set forth in the first two paragraphs of the foregoing part A, and for the additional reasons hereafter discussed.

To begin with, the theory of petitioner's attack on MTC is obscure. Apparently, petitioner would require MTC either to resign from PMA altogether and refrain from contributing to the mech fund, or, alternatively, to raise a major portion of the assessments attributable to petitioner's automobiles from other customers. The total impracticality of either alternative is self-evident. Aside from the fact that resignation would jeopardize MTC's continued ability to operate, it would not enable it to avoid the union's insistence on a contract imposing at least similar if not greater burdens on MTC. Alternatively, should MTC assess a higher charge against other cargo than competing stevedores in order to reduce the charges to petitioner, it would soon lose such other cargo to its competitors. Had MTC followed either alternative, petitioner would have been looking for another stevedore contractor long ago.

Petitioner's theory is not only obscure, but it is fallacious. This is illustrated by petitioner's assertion that "it is elementary that one cargo cannot be used to subsidize another." (Pet. Br., p. 45n) The Commission is not in the business of deciding how costs are to be

allocated among cargoes or customers and "the Shipping Act was not intended as a substitute for the managerial judgment" of those it regulates. See, Joseph Singer v. Trans Atlantic Passenger Conference, 1 U.S.S.B. 520, 523 (1936). If it had any jurisdiction over the terms of the private stevedore contract between petitioner and MTC (which it does not), that jurisdiction would be confined to determining whether benefits are provided against the charge. Evans Cooperage Co., Inc. v. Board of Commissioners, 6 P.M.B. 415 (1961).

It so found. (R. 10)

And certainly, this Court cannot go behind the Commission's finding to pursue a tortuous course of cost accounting as petitioner invites it to do. All this Court is concerned with is whether there was substantial evidence to support the Commission's conclusion that MTC's actions did not amount to an "unreasonable practice." The facts previously referred to concerning MTC's membership in PMA and the necessity for its participation in the funding of the collective bargaining agreement, MTC's use of the same measurement basis for several years previously, its efforts to negotiate a satisfactory compromise with petitioner (R. 10-11), and petitioner's own voluntary act in contracting with MTC provide ample support for the Commission's finding.

CONCLUSION

For the reason stated, the Commission's order
should be affirmed as to MTC and the petition dismissed.

Dated: April 27, 1966.

Respectfully submitted,

William W. Schwarzer
William W. Schwarzer

John Edward Burley, Jr.
John Edward Burley, Jr.

McCutchen, Doyle, Brown, Trautman & Enersen
McCutchen, Doyle, Brown, Trautman & Enersen

Attorneys for Intervenor
Marine Terminals Corporation

RECEIVED

APPENDIX

FEB 7 1965

WWY

DATES ENTERED
IN THE UNITED STATES COURT OF APPEALS
BY M
FOR THE DISTRICT OF COLUMBIA CIRCUIT

RECEIVED

FEB 2 1966

CLERK OF THE UNITED
STATES COURT OF APPEALS

VOLKSWAGENWERK AKTIENGESELLSCHAFT,

Petitioner,

vs.

No. 1,9840

FEDERAL MARITIME COMMISSION
and UNITED STATES OF AMERICA,

Respondents.

NOTION FOR LEAVE TO INTERVENE

To The Honorable Judges of the
United States Court of Appeals for the
District of Columbia Circuit:

Marine Terminals Corporation, 261 Steuart Street,
San Francisco, California 94105, moves pursuant to Section
8 of the Judicial Review Act of 1950 (5 U.S.C. § 1038) for
leave to intervene in the above proceeding. Section 8 of
the Judicial Review Act provides that any party in interest
in the proceeding before the agency, whose interests will
be affected if the order of the agency is enjoined, set
aside or suspended, "may appear as parties thereto of their
own motion and as of right, and be represented by counsel
in any proceeding to review such order."

Marine Terminals Corporation was a respondent in
the proceedings before the Federal Maritime Commission. Its

APPENDIX

interests will be adversely affected if the order of the Commission is set aside insofar as that order determined that Marine Terminals Corporation did not violate Sections 15, 16 or 17 of the Shipping Act, 1916. Intervenor Marine Terminals Corporation intends to appear for the limited purpose of urging affirmance of the Commission's order insofar as it pertained to Marine Terminals Corporation.

Dated: January 27, 1966.

Respectfully submitted,
John Edward Hurley, Jr.
William W Schwarzer
McCutchen, Doyle, Brown, Trautman & Enersen
601 California Street
San Francisco, California 94108

By John Edward Hurley, Jr.
By William W Schwarzer

Attorneys for Marine Terminals Corporation

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the Answering Brief of Intervenor Marine Terminals Corporation to be served upon all parties by causing copies thereof to be mailed, postage prepaid and properly addressed, to the following:

Richard A. Whiting, Esq.
Robert J. Corber, Esq.
Steptoe & Johnson
1250 Connecticut Avenue, N. W.
Washington, D. C. 20036

Walter Herzfeld, Esq.
Cecelia H. Goetz
Bernard J. Wald, Esq.
Herzfeld & Rubin
40 Wall Street
New York, New York 10005

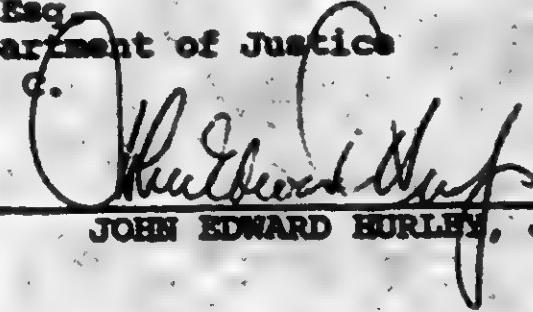
Stanley J. Madden, Esq.
Pillsbury, Madison & Sutro
225 Bush Street
San Francisco, California 94104

Gary J. Torre, Esq.
Lillick, Geary, Wheat, Adams & Charles
311 California Street
San Francisco, California 94104

R. Frederic Fisher, Esq.
Lillick, Geary, Wheat, Adams & Charles
1625 K Street, N. W.
Washington, D. C. 20006

Walter H. Mayo, III, Esq.
Federal Maritime Commission
1321 H Street, N. W.
Washington, D. C. 20573

Irwin A. Seibel, Esq.
United States Department of Justice
Washington 25, D. C.


JOHN EDWARD HURLEY, JR.

May 2, 1966.

In the
UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit
No. 19,840

VOLKSWAGENWERK AKTIENGESELLSCHAFT,
Petitioner,
against
FEDERAL MARITIME COMMISSION and
UNITED STATES OF AMERICA,
Respondents,
PACIFIC MARITIME ASSOCIATION and
MARINE TERMINALS CORPORATION,
Intervenors.

On Petition to Review and Set Aside Order of the
Federal Maritime Commission

SUPPLEMENTAL REPLY BRIEF OF INTER-
VENOR PACIFIC MARITIME ASSOCIATION

During oral argument petitioner's counsel referred
to the Court the decision of the Federal Maritime Commission
dated May 25, 1966 In the Matter Involving Investigation of

Free Time Practices — Port of San Diego. This brief is submitted pursuant to order of the Court allowing intervenor opportunity to reply to petitioner's use of this authority.

Petitioner's counsel asserted that the Commission's ruling on Section 16 of the Shipping Act, 1916 conflicted with the decision of the Court of Appeals for the Second Circuit in New York Foreign Freight F. & B. Ass'n v. Federal Maritime Commission, 337 F. 2d 289 (1964) and its own recent decision In the Matter Involving Investigation of Free Time Practices — Port of San Diego. Petitioner asserts that these two decisions have overturned the Commission's construction of Section 16 whereunder the showing of a competitive relationship between the shipper of cargo allegedly preferred and the shipper of cargo allegedly prejudiced was required before the Section could be invoked. Hence, petitioner maintains that its concession that "no competitor" of its "got ¹a better treatment" under the Mechanization Plan does not dispose of its claims of violations under Section 16. Neither the decision of the Court of Appeals nor that of the Commission supports petitioner's argument under Section 16.

-
1. Attached is a photocopy of a page from the reporter's transcript reporting oral argument before the Federal Maritime Commission in which petitioner's concession, together with its recognition that the authorities did not warrant pressing of its point that Section 16 had been infringed, is clearly made.

Neither case supports petitioner's bold assertion that the Commission has acted arbitrarily and capriciously. On the contrary, both cases demonstrate that the Commission, in holding in this litigation that a showing of a competitive relationship between shippers allegedly preferred and prejudiced was required, applied a well-established rule of law underlying the Shipping Act, 1916.

In the New York Foreign Freight F. & B. Ass'n case the Court was presented with circumstances in which identical services were rendered various shippers, such as the procurement of insurance or arranging for cartage, for which widely varying charges were made. The Court of Appeals held that "The very practice of charging shippers disguised markups of widely varying amounts on substantially identical services" constitutes a violation of Section 16, notwithstanding that a competitive relationship may not have been shown to exist between the shippers involved. The Court, however, expressly recognized that the showing of such a competitive relationship would be required when the services involved are not identical but are "dependent upon the particular commodity." The Court stated:

"Transportation or wharfage charges are dependent upon the particular commodity involved; the cost for shipping or storing bananas, for example, bears no relation to the fees levied for heavy industrial equipment. To find an unlawful discrimination

in transportation charges thus quite properly requires a showing of competitive relationship between two shippers who are charged different prices." 337 F. 2d at 299.

The Commission's recent decision In the Matter Involving Investigation of Free Time Practices — Port of San Diego is merely an application of the prevailing rule when identical services are involved. It is not, as petitioner's counsel asserts, a rejection of the rule applied in this litigation.

In the Port of San Diego case, the Commission was concerned with the Port's practice of offering 30 days of free storage to all cargoes passing through the port without regard to the nature of the cargo, when a substantially shorter period of "free-time" would suffice to effectuate delivery pursuant to the shipping documents. Since the free time offered was not required to complete the transportation process and since all cargoes cannot profitably use the storage time offered, which bore "no relationship to the character of the cargo", the Commission concluded that varying charges were being made by the terminal to "users of storage." In other words, an identical service (provision of free storage time) was being afforded by the Port with varying economic consequences for the various shippers using the Port.

Relying squarely on the New York Foreign Freight F. & B. Ass'n case, the Commission found that a violation

of Section 16 was shown, notwithstanding that a competitive relationship between shippers making use of such services may not have been established. The Commission, however, like the Court of Appeals for the Second Circuit, appreciated that such a relationship was required under Section 16 when the challenged charges or practices related to services which would not be identical for all cargoes, but depended upon the characteristics of the cargo involved. The Commission stated:

"Thus, whatever the justification for requiring a competitive relationship when determining the existence of preference or prejudice in ocean freight rates, such a requirement cannot be justified when determining whether preference or prejudice results from free time or free storage practices; for free time, like the forwarder's procurement of marine insurance, bears no relationship to the character of the cargo — it is extended to cargo on equal terms without regard to size, shape or any other characteristic inherent in the particular cargo involved. The same holds true for storage made available at a flat charge per square foot regardless of what commodity is to be stored." ² At pp. 28-29.

There is no doubt that the nature and scope of stevedoring services required to move cargoes is directly

-
2. The fact that the Commission and Court of Appeals do not refer to charges for stevedoring services together with transportation and wharfage charges should not mislead the Court into believing that stevedoring services are not dependent upon the nature of the cargo. This silence derives from the fact that the Commission has not asserted jurisdiction to regulate practices and charges pertaining to stevedoring services as such.

related to the "size, shape" and "other characteristics" of the cargo involved. In the words of the Court of Appeals, the services, and costs thereof, for handling "bananas, for example, bears no relation to the fees levied for heavy industrial equipment." 337 F. 2d at 299. Likewise, the labor costs attendant with the handling of automobiles bears no relation to the costs of handling bulk cargoes and coastwise lumber.

While intervenor maintains that none of the Sections of the Shipping Act, 1916 were intended to regulate the conduct of intervenor's members in negotiating and implementing collective bargaining agreements, the cases on which petitioner relies are in all events unrelated to the circumstances presented by this litigation. The facts presented herein are the converse of those presented by the cited cases. Those cases involved services which were not dependent upon the nature of the cargo and varying charges therefor. Here, the cargo-handling services required by each longshore operation will be dependent upon the nature of the cargo involved and will not be identical for each "user" of such services.

We therefore submit that petitioner's charges of violation under Section 16 of the Shipping Act, 1916 are not supported by the cases involving New York Foreign Freight

F. & B. Ass'n or the Port of San Diego. Both cases demonstrate that a showing of a competitive relationship is required under Section 16 when the challenged costs or practices relate to services that will vary depending upon the nature of the cargo. We submit there is no basis for setting aside in this litigation an administrative interpretation of the Shipping Act, 1916 which has been and is being consistently applied by the Commission responsible for administration of the Act.

Dated: June 14, 1966.

Respectfully submitted,

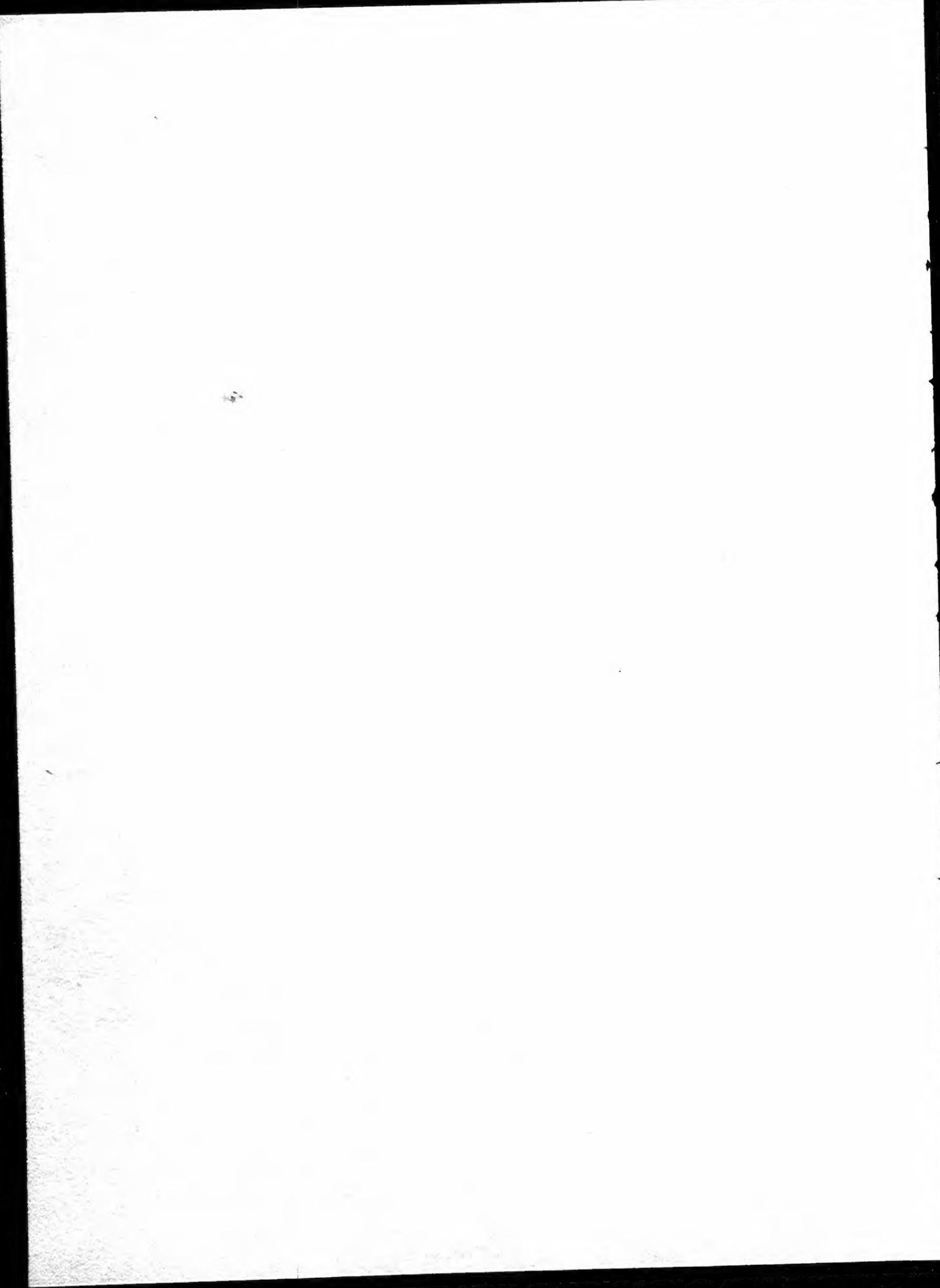
Edward D. Ransom
Edward D. Ransom

Gary J. Torre
Gary J. Torre

R. Frederic Fisher
R. Frederic Fisher

LILLICK, GEARY, WHEAT, ADAMS & CHARLES
311 California Street
San Francisco, California 94104

Attorneys for Intervenor
Pacific Maritime Association



7 scrap iron to what might be considered bulk.

2 Do they have that apparatus in the San Francisco Bay
3 area?

4 MR. HERZFELD: Again, I have to confess my ignorance.

5 CHAIRMAN HARLLEE: You haven't mentioned section 16
6 in your oral argument. Do you feel there was a violation of
7 section 16?

8 MR. HERZFELD: Yes, we have made this point and we
9 have covered it in our brief.

10 Section 16 historically has been construed as apply-
11 ing only where there is discrimination among cargo in competition
12 with each other and obviously, the taxation of automobiles here
13 is uniform. No competitor of ours got a better treatment, so
14 according to this line of cases we would have no right under
15 section 16.

16 We have submitted that these cases are based on an
17 erroneous view of the statute and that actually, the statute
18 in referring to discriminatory treatment was not intended to be
19 limited to discrimination among competing cargoes. But I did
20 not press this point because I believe that the Commission does
21 not have to reach it.

22 Section 17, paragraph 2, forms an adequate basis for
23 the decision which we hope the decision will render.

24 CHAIRMAN HARLLEE: Thank you.

25 Vice Chairman Day?